

FEDERAL BUREAU OF INVESTIGATION
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FEDERAL BUREAU OF INVESTIGATION

- 1 -

Date of transcription 9/25/90

147A-571-167,175

[redacted] voluntarily appeared at the FBI office, Omaha, Nebraska, with his attorney, [redacted] was interviewed SA [redacted] of the Federal Bureau of Investigation and SA [redacted] of the Internal Revenue Service. [redacted] provided the following information.

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[redacted] was advised he was being interviewed regarding additional funds discovered in an audit of his checking account at FIRST WESTROADS BANK embezzled from FRANKLIN COMMUNITY FEDERAL CREDIT UNION from 1985 to 1988. [redacted] had previously been interviewed regarding his embezzlement of funds which were obtained from filling out an expense voucher depositing those funds into his checking account at FRANKLIN COMMUNITY FEDERAL CREDIT UNION (FCFCU). Further review of FCFCU determined FIRST WESTROADS BANK maintaining an account under the name of [redacted]

[redacted] account number [redacted] Review of the FIRST WESTROADS BANK checking account reflects additional funds being deposited into the checking account for the year 1985 in the amount of \$2,934.00; for 1986 in the amount of \$7,690.00; 1987 in the amount of \$8,555.95; and for the year 1988 a deposit of \$365.00. Audit reflected a total sum a \$19,544.95 in additional funds being embezzled from FCFCU and deposited into [redacted] account at FIRST WESTROADS BANK.

[redacted] advised that he made the deposits. A review was conducted of each individual amount for 1985, 1986, and 1987. He admitted that the funds were deposited into his account and he obtained the monies from FCFCU by the use of the expense voucher or by the issuance of a money order in his name which was deposited into the account. [redacted] stated "Yes, I did it." [redacted] advised he had forgotten about the account when he was previously being interviewed by SAs [redacted] and advised that he did not recall it even though he was asked if he had additional accounts in the previous interview.

[redacted] advised he utilized the WESTROADS BANK for payment of bills where a check would be utilized since FCFCU did not have individual checking accounts; he maintained this checking account for the payment of personal bills. [redacted] advised no other individual was aware of his account and did not utilize those funds. [redacted] advised he always filled out an expense

Investigation on 9/20/90 at Omaha, NebraskaFile # 147A-571-769by SA [redacted] Date dictated 9/20/90 6 1550

Continuation of FD-302 of [redacted]

, On 9/20/90

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voucher and never obtained the funds by just taking cash out of the teller drawer. [redacted] was employed at FCFCU as the head teller and as a result had access to the drawer and had authority over the expense voucher system as previously stated in the previous interview.

[redacted] advised he had no other source of income other than his employment at FCFCU. All monies reflected in the audit were monies he obtained by filling out an expense voucher and embezzling the funds from FCFCU. [redacted] advised that he did not receive any extra paychecks or have extra outside employment, never received any inheritance, and explained the funds he obtained as embezzled funds from FCFCU. At this time [redacted] was shown the numerous expense voucher tickets of which he circled and signed for the ones he had filled out and utilized to obtain funds from 1985 through 1988 and were deposited into his FIRST WESTROADS BANK.

[redacted] advised he had no other checking accounts, savings accounts, and was sorry that he did not inform the agents investigating this matter about the account during the first interview. His attorney, [redacted], informed [redacted] he had to be truthful and could no longer lie or forget and that he needed to be very honest with the interviewing agents and at this time he was to tell the truth regarding his involvement at FCFCU.

[redacted] advised he provided all the information that he is aware of regarding FCFCU and his employment.

[redacted] advised he is willing to plead guilty and that the additional funds discovered in his FIRST WESTROADS BANK account would now total approximately \$28,000.00 for the total embezzlement from FCFCU. [redacted] advised he was willing to plead guilty to that and that the information that he was to plead guilty to on September 21, 1990, should be altered to reflect the new amounts discovered in the FIRST WESTROADS BANK.

FILED
U. S. DISTRICT COURT
DISTRICT OF NEBRASKA

90 OCT -1 PM 4:23

IN THE UNITED STATES DISTRICT COURT NORBERT H. EBEL
FOR THE DISTRICT OF NEBRASKA CLERK

UNITED STATES OF AMERICA,) CR 89-0-63

Plaintiff(s),)

vs.) MEMORANDUM AND ORDER

LAWRENCE E. KING, JR., and)
ALICE PLOUCHE KING,)

Defendant(s).)

This matter came on for a status conference on October 1, 1990. Counsel for all parties appeared for a status conference in chambers. Having received a written request for an evidentiary hearing by Steven E. Achelpol and Marilyn N. Abbott, counsel for Mr. King, and having been further advised of the position of Mr. King through standby counsel, Alan G. Stoler, and having been further advised as to the position of the United States of America, and having been further advised as to the position of the defendant Alice Plouche King,

IT IS ORDERED that:

1. the written correspondence received from Alan G. Stoler and Steven E. Achelpohl and Marilyn N. Abbott is herewith tendered to the clerk of the court, who shall file the same, but said correspondence shall remain sealed until further order of this court;

2. the Pretrial Services Officer is herewith directed to contact the witnesses identified in the correspondence from

147A-51-772

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[Redacted]	

[Signature]

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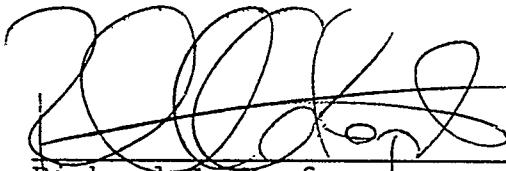
attorneys Achelpol, Abbott, and Stoler to arrange for their testimony ¹;

3. an evidentiary hearing on the issue of Mr. King's competency is tentatively scheduled to commence at 9:00 a.m. on October 17, 1990, and to continue through October 19, 1990, if necessary;

4. a hearing on the anticipated motion to close the evidentiary hearing is scheduled for October 10, 1990, at 9:00 a.m., before the undersigned.

DATED this 1st day of October, 1990.

BY THE COURT:



Richard G. Kopf

United States Magistrate

¹It was the agreement of all counsel that said witnesses should be called by the Court as the Court's witnesses. It was further agreed by all parties that the Court should initiate the direct examination of the witnesses, allowing counsel to put reasonable additional follow-up questions to the witnesses. It was further agreed by all parties that the witnesses should be directed to bring with them such additional pertinent records as the witnesses may have and which have not been previously produced. The Court intends to generally proceed as agreed by all parties.

UNITED STATES DISTRICT COURT

DISTRICT OF NEBRASKA

P.O. BOX 457

OMAHA, NEBRASKA 68101

RICHARD G. KOPF
MAGISTRATE

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

TELEPHONE
402-221-4178
FTS: 864-4178

October 4, 1990

Dr. [redacted]
Immanuel Mental Health Center
6901 N. 72nd Street
Omaha, NE 68122

Dr. [redacted]
6600 France Avenue South
Suite 545
Minneapolis, MN 55435

Dr. [redacted]
Federal Medical Center
P. O. Box 4600
Rochester, MN 55903-4600

Dr. [redacted]
2250 College Blvd.
Suite 340
Overland Park, KS 66211

Dr. [redacted]
Menninger Clinic
Law and Psychiatric Department
Box 829
Topeka, KS 000601-0829

Re: United States v. [redacted]
CR 89-0-63

Dear Doctors:

To each of you please find enclosed an original subpoena duces tecum. Please note that you are to bring with you all records pertaining to [redacted] which have not previously been produced to the court. As indicated on the face of the pertinent subpoena, the schedule for testimony of each of you is as follows:

Dr. [redacted]
Dr. [redacted]
Dr. [redacted]
Dr. [redacted]
Dr. [redacted]

October 17, 1990 9:00 a.m.
October 17, 1990 1:00 p.m.
October 18, 1990 1:00 p.m.
October 19, 1990 9:00 a.m.
October 19, 1990 1:00 p.m.

147A-871-773

147A-871-773

[redacted]
[redacted]

Dr. [redacted]
Dr. [redacted]
Dr. [redacted]
Dr. [redacted]
Dr. [redacted]

Page 2

October 4, 1990

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On another matter, some of you have asked Pretrial Services Officer [redacted] whether, and to what extent, you will be paid for your testimony. Based upon your questions, I instructed the Clerk of the United States District Court to contact the Administrative Office of the United States Courts. The Clerk's Office advises me, based upon advice of the Administrative Office of the United States Courts, that payment of such fees are to be made by the Department of Justice. Accordingly, the Chief Deputy Clerk of our Court indicates that after you have attended the hearings and given testimony, you should submit a bill to the Clerk of the United States District Court, c/o [redacted] Chief Deputy Clerk, P. O. Box 129 DTS, Omaha, NE 68101. He will then submit the bill to the United States Attorney for the District of Nebraska. At that point, the United States Attorney for the District of Nebraska will handle further processing of your claims.

If you have any further questions, please do not hesitate to contact Pretrial Services Officer [redacted] whose telephone number is [redacted]

Thank you very kindly.

Very truly yours,



Richard G. Kopf
United States Magistrate

RGK:gm

Enclosure

cc: All Counsel of Record

Don Ranheim, Pretrial Services Officer
[redacted] Chief Deputy Clerk

SCHUMACHER & ACHELPOHL
ATTORNEYS AT LAW
A PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS
100 HISTORIC LIBRARY PLAZA
1823 HARNEY STREET
OMAHA, NEBRASKA 68102-1908

JAMES R. SCHUMACHER, P.C.
STEVEN E. ACHELPOHL
GREGG H. COFFMAN
MARILYN N. ABBOTT
JOHN W. STEELE
STEPHANIE WEBER MILONE

TELEPHONE:
(402) 346-9000
TELECOPIER:
(402) 346-6112

Octoberber 3, 1990

The Honorable Richard G. Kopf
U.S. District Court
Ed Zorinsky Federal Building
17th & Capitol Streets
Omaha, NE 68101

RE: U.S. v. CR89-0-63

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Dear Judge Kopf:

Enclosed is Defendant's Brief in Support of Motion to Close the Competency Hearing along with a copy of the Motion to Close the Competency Hearing which has been filed with the Clerk's office and a copy of the Motion for Change of Venue.

Based upon our reading of the local rules, we do not believe that the briefs filed in support of motions are public record. For this reason, we would request advance notice in the event that any media attorney seeks to obtain a copy of the brief either from your office or the U.S. Attorney. In the event such request is made by an attorney who plans to be heard on the closure question, we would seek a protective order prohibiting disclosure of brief by the attorney for the media prior to delivery of the brief to the attorney.

Very truly yours,

For the firm

MNA:dw

cc:

K/Kopr

147A-591-774

Oct 10, 1990

[Signature]

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA,) CASE NO. CR89-0-63
)
 Plaintiff,)
)
 vs.) MOTION FOR CHANGE OF VENUE
)
 LAWRENCE E. KING, JR. and)
 ALICE PLOCHE KING,)
)
 Defendants.)

COMES NOW the Defendant, Lawrence E. King, Jr., by and through his undersigned attorneys, and hereby renews his Motion for Change of Venue, and for a transfer of the trial from the District of Nebraska. The Defendant offers the Brief previously tendered in Support of the Motion to Change Venue.

The Defendant hereby requests an evidentiary hearing on this Motion.

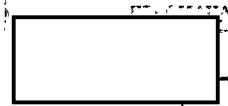
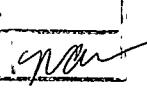
LAWRENCE E. KING, Defendant

By Steven E. Achelphohl
Marilyn N. Abbott
SCHUMACHER & ACHELPOHL
1823 Harney St., Suite 100
Omaha, NE 68102-1908
(402) 346-9000

CERTIFICATE OF SERVICE

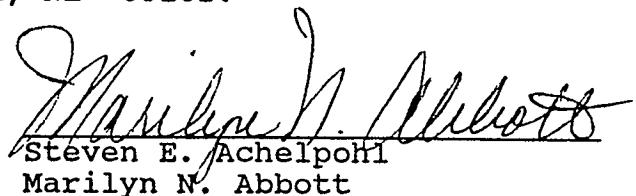
The undersigned hereby certifies that a copy of the above and foregoing Motion for Change of Venue was served by depositing in the U.S. Mail, postage prepaid on this 31 day of October, 1990 to Thomas D. Thalken, First Assistant U.S. Attorney, P.O. Box 1228

142-1821-775

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DTS, Omaha, NE 68101; Jerold V. Fennell, Suite 225, Regency Court,
120 Regency Parkway Drive, Omaha, NE 68114 and to Alan Stoler,
1004 Historic Library Plaza, Omaha, NE 68102.


Steven E. Achelpohl
Marilyn N. Abbott

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA,) CASE NO. CR89-0-63
Plaintiff,)
vs.) MOTION FOR CLOSURE OF
LAWRENCE E. KING, JR. and) COMPETENCY HEARING AND SEALING
ALICE PLOCHE KING,) OF TRANSCRIPTS AND RECORDS
Defendants.) OF THE HEARING

COMES NOW the Defendant, Lawrence E. King, Jr., by and through his attorneys, and requests an order of this Court granting closure of the competency hearing currently scheduled for October 17-19, 1990 and for sealing of the transcript and all records of the hearing. It is specifically requested that the Court enter an order allowing the presence at the hearing of only necessary court personnel, the attorneys for the government, the Defendant, his attorneys, and witnesses. In support of this motion, the Defendant shows the Court as follows:

1. This Court has previously found that the pre-trial publicity regarding this case has been "massive, and in some cases inflammatory".

2. Further, this Court has also found that evidence and testimony elicited at competency proceedings are "considered privileged information and shall be used only in proceedings to determine Mr. King's competence to stand trial".

3. Due to the massive media publicity, the right of the Defendant to a fair trial will be irreparably damaged by inadmissible, privileged, and prejudicial information being disclosed to potential jurors.

4. The press and public have a right of access to criminal proceedings but this right is not absolute as set forth in Gannett Co. v. DePasquale County Court, 443 U.S. 368 (1979). In Gannett,

the Supreme Court held that the trial judge has an "affirmative constitutional duty to minimize the effects of prejudicial pre-trial publicity." Id. at 378.

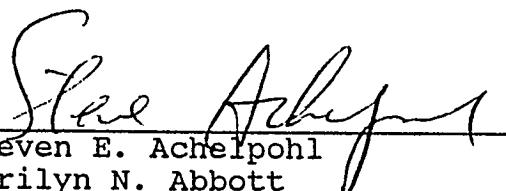
5. Closure of the hearing will avoid damage to the Defendant's right to a fair trial through prejudicial pre-trial publicity.

6. In the event the hearing is not closed, the Defendant requests this Court to readopt for purposes of this competency hearing the Court's ruling of March 29, 1990 as specifically made in Paragraphs 10 and 11 regarding partial closure of the hearing to protect the 5th Amendment privilege and the attorney client privilege.

WHEREFORE, the Defendant prays for an Order of this Court granting closure of the competency hearing and sealing all transcripts and records of the proceeding. Further, the Defendant requests that attendance at the hearing be limited to necessary Court personnel, attorneys for the government, the Defendant and Defendant's counsel, and witnesses.

LAWRENCE E. KING, Defendant

By

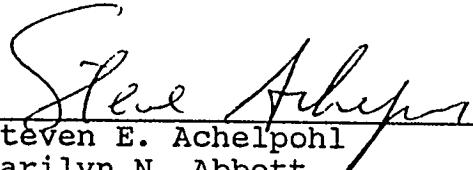

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(402) 346-9000

- and -


Alan Stoler
1823 Harney St., Suite 1004
Omaha, NE 68102-1908
(402) 346-1733

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Motion for Closure was served by depositing in the U.S. Mail, postage prepaid on this 7 day of October, 1990 to Thomas D. Thalken, First Assistant U.S. Attorney, P.O. Box 1228 DTS, Omaha, NE 68101; Jerold V. Fennell, Suite 225, Regency Court, 120 Regency Parkway Drive, Omaha, NE 68114.



Steven E. Achelpohl
Marilyn N. Abbott

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA,) CASE NO. CR89-0-63
Plaintiff,)
vs.)
LAWRENCE E. KING, JR. and)
ALICE PLOCHE KING,)
Defendants.)

(Signature)
BRIEF IN SUPPORT OF MOTION
FOR CLOSURE OF COMPETENCY HEARING AND
SEALING OF RECORDS AND TRANSCRIPTS OF THE HEARING

Steven E. Achelpohl
Marilyn N. Abbott
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1823 Harney St., Suite 100
Omaha, NE 68102-1908
(402) 346-9000
Attorney for
Lawrence E. King, Jr.

- and -

Alan Stoler
1823 Harney Street, Suite 1004
Omaha, NE 68102-1908
(402) 346-1733
Attorney for
Lawrence E. King, Jr.

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INTRODUCTION

The Defendant Lawrence E. King, Jr. moves this Court for an Order closing an evidentiary hearing with respect to his competency to stand trial. The Defendant also requests the sealing of all records and transcripts from such hearing. This motion places before the Court the question of balancing the Mr. King's right to a fair trial versus the public interest in access to pre-trial criminal proceedings.

STANDARDS FOR CLOSURE

The primary cases on closure of criminal proceedings are Gannett Co., Inc. v. DePasquale County Court, 443 U.S. 368 (1979) and Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980). Both addressed the problem of balancing the constitutional guarantees afforded the accused versus those afforded the press and the public.

In Gannett, the press and public were excluded from a pretrial hearing on a motion to suppress. The defendants argued that an "unabated buildup of adverse publicity had jeopardized their ability to receive a fair trial". The Supreme Court held that the public had no constitutional right under the Sixth and Fourteenth Amendments to attend criminal trials. Id. at 391. While the Court noted that the public had a right to access to criminal trials, it held that this right was not absolute under the First and Fourteenth Amendments. Id. at 391-93. The Supreme Court recognized that pre-trial publicity can endanger the ability of a defendant to receive a fair trial, and the trial judge has an "affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity." Id. at 378. To safeguard the due process rights of the accused, the trial judge may take protective measures even if they are not "strictly and inescapably necessary". Id. at 378.

The Gannett opinion discusses the special risks of publicity concerning pretrial proceedings, specifically suppression proceedings, noting that the purpose of such a hearing is to screen out unreliable or illegally obtained evidence. Publicity attending such proceedings "could influence public opinion against a defendant and inform potential jurors of inculpatory information wholly inadmissible at the actual trial." Id. at 378. The danger of such publicity was characterized as "particularly acute" because it may be difficult to measure with any degree of certainty the effects of such publicity on the fairness of the trial. Id. at

378. Unlike the trial itself, where "inadmissible prejudicial information" can be kept from the jury in a variety of ways, information publicized during pre-trial matters cannot be kept from prospective jurors. Id. at 378-79. The Supreme Court observed:

[c]losure of pretrial proceedings is often one of the most effective methods that a trial judge can employ to attempt to insure that the fairness of a trial will not be jeopardized by the dissemination of such information throughout the community before the trial itself has even begun.

Id. at 379.

The Gannett decision underscores that the right to a public trial under the Sixth and Fourteenth Amendment is for the benefit of the accused, not the public. Id. at 381. The Court reasoned that the Sixth Amendment "permits and even presumes open trial as a norm", but held that the Sixth Amendment does not require that pretrial proceedings be open to the public. Id. at 385.

In Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980), the Supreme Court considered the question whether a right of access to the trial itself, as distinguished from hearings on pretrial motions, was constitutionally guaranteed. The Court held that "the right to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and of the press could be eviscerated." Id. at 580. [Citation and footnotes omitted.] The Court ordered the opening of the trial because the trial judge failed to make findings to support closure; no inquiry was made into alternatives that might ensure fairness; and there was no recognition of the constitutional right of the public or press to attend the trial. Id. at 580-81. Finally, the Court held, that "[a]bsent an overriding interest articulated in findings, the trial of a criminal case must be open to the public". Id. at 581. The Court

then clarified its holding as follows:

We have no occasion here to define the circumstances in which all or parts of a criminal trial may be closed to the public . . . but our holding today does not mean that the First Amendment rights of the public and representatives of the press are absolute.

Id. at 581 n. 18 [citation omitted].

The cases following Gannett and Richmond Newspapers have applied a three-prong test discussed in Justice Blackmun's dissenting opinion in Gannett to the closure question. The test requires that a defendant who seeks closure establish the following:

First, he should provide an adequate basis to support a finding that there is a substantial probability that irreparable damage to his fair trial right will result from conducting the proceeding in public.

Second, the accused should show a substantial probability that alternatives to closure will not protect adequately his right to a fair trial.

Third, the accused should demonstrate that there is a substantial probability that closure will be effective in protecting against perceived harm.

443 U.S. at 441-42.

The Eighth Circuit followed this test in United States v. Powers, 622 F.2d 317 (8th Cir.1980). In that case the defendant sought to close the entire trial from the press and public. He argued that he would not be able to adequately present his defense in a public proceeding because he had acted as an informant for law enforcement officials. The Court held, "the benefits of an open, public trial are substantial. Only in the rare case will closure to the press be necessary in order to protect a defendant's right to fair trial." Id. at 323. The Court specifically addressed

circumstances where the prosecutor did not consent to the closure; in this case the defendant was required to carry the burden of demonstrating a "strict and inescapable necessity for closure." The court found that Powers failed to meet all three prongs of the Gannett test. Id. at 325. However, Powers is distinguishable here because it involved a motion to close the trial itself, not a pretrial proceeding.

In United States v. Civella, 493 F.Supp. 786 (W.D. Mo. 1980), defendants moved to close pretrial hearings and seal pretrial motions because they had been subject to "unprecedented publicity" and anticipated widespread coverage to continue. The District Court found that the test set forth in the Eighth Circuit's opinion in Powers was applicable to pre-trial motion closure requests. In denying the motion, the Court noted that the publicity had been "substantial", however "[t]he defendants have not claimed that news media sources outside the Kansas City vicinity have given them extensive pre-trial publicity". Id. at 789. The court stated that the metropolitan newspapers ("Kansas City Star" and "Kansas City Times") were not widely circulated in the out-state counties, therefore the court would not agree that there was "widespread" pre-trial publicity in the case. The District Court also noted that no evidence was adduced as to the extent of coverage by the electronic media. The Court denied the closure motion finding that there was "no evidence before the court indicating that the defendants have received other than minimal pre-trial publicity outside of Kansas City." Id. at 790. Having denied closure, the court held that a sua sponte transfer of the trial to Springfield, Missouri was "strongly supported, if not mandated" by the Supreme Court based upon the reasoning contained in Gannett and Sheppard v. Maxwell, 384 U.S. 333 (1966). The District court specifically noted the admonition of Gannett that ". . . a trial judge has an affirmative constitutional duty to minimize the effects of prejudicial pre-trial publicity . . ." Id. at 790, quoting

Gannett at 2904.

A number of courts have faulted closure orders in which the trial judge failed to articulate reasons why closure was necessary, and reasons alternatives to closure were inadequate. See In re Application of the Herald Co., 734 F.2d 93 (2d Cir. 1984). United States v. Criden, 675 F.2d 550 (3d Cir. 1982); In re United States ex rel. Pulitzer Publishing Co., 635 F.2d 676 (8th Cir. 1980).

In United States v. Chagra, 701 F.2d 354 (5th Cir. 1983), the Court found closure of a pre-trial hearing proper. The Court recognized that there is a first amendment right to attend criminal trials "unless it is demonstrated that some curtailment of that right is required 'to protect defendant's superior right to a fair trial' or that some other overriding consideration requires closure." Id. at 361. This case involved a motion to close a pre-trial bail reduction hearing, which was opposed by several newspapers. The Court held:

Evidence adduced at bail-setting procedures may present a serious threat to the defendant's fair trial right. Evidence may be considered in a bail reduction hearing that would not be admissible at trial. Fed.R.Evid. 1101. Moreover, some alternatives available to reduce the danger of prejudice at trial, like sequestration of the jury, are simply unavailable at the pre-trial bail reduction hearing.

Id. at 364. The Court in Chagra noted that the Judicial Conference and the Justice Department had approved the "less stringent standard" for closure set forth in Justice Powell's concurring opinion in Gannett:

Justice Powell . . . would require the defendant only to "make some showing that the fairness of his trial likely will be prejudiced by public access to the proceedings." Id. at 401, 99 S.Ct. at 2916, 61 L.Ed.2d at 635. The Judicial Conference of the United States has approved the less

stringent standard proposed by Justice Powell. See Revised Report of the Judicial Conference Committee on the Operation of the Jury System on the "Free-Press--Fair Trial" Issue 87 'F.R.D. 519, 535 (1980). The Justice Department has also adopted this standard. 28 C.F.R. §50.9 (1982). We hold that a defendant seeking closure of a pretrial bond reduction hearing overcomes the first amendment right of access to that hearing if he shows that:

- (1) his right to a fair trial will likely be prejudiced by conducting the hearing publicly;
- (2) alternatives to closure cannot adequately protect his fair trial right; and
- (3) closure will probably be effective in protecting against the perceived danger.

Id. at 364-65.

The trial judge proceeded to consider a change of venue within the State of Texas. Because the "publicity had been pervasive throughout the State" this alternative was rejected. Id. at 365. The Fifth Circuit noted that the Judge should have considered a change of venue to a district in another state under Fed.R.Crim.P. 21, but held such error harmless. Id. at 365.

The Court in Chagra addressed the First Amendment question as follows:

Recognition of a right of access by the public and the press does not obliterate the differences between trial and pretrial, nor does it fix the judicial scales against closure beyond counterweight. Despite the categorical language of the first amendment, the rights it safeguards are not absolute.

Id. at 364.

In conclusion, the Fifth Circuit held:

There is no single divine constitutional right to whose reign all others are subject. When

one constitutional right cannot be protected to the ultimate degree without violating another, the trial judge must find the course that will recognize and protect each in just measure, forfeiting neither and permitting neither to dominate the other. The public enjoys a first amendment right of access to pre-trial bond reduction hearings. That right, however, must accommodate other constitutional rights.

Id. at 365.

**PRIOR ORDERS OF THIS COURT AND PRIOR HEARINGS:
COMPETENCY AND CHANGE OF VENUE**

On March 30, 1990, this Court made findings and recommendations regarding Mr. King's competency to stand trial. This Court recommended that Mr. King be found incompetent to stand trial and be placed in an appropriate facility for treatment. The findings of the Magistrate were approved by the Honorable William G. Cambridge, District Judge by Memorandum and Order dated April 3, 1990. The District Court also forwarded various psychological records regarding Mr. King to the United States Medical Center for Federal Prisoners at Rochester, Minnesota, noting that the "facility shall not disclose such documents to the public and such documents shall remain sealed." United States v. King, CR89-0-63, Memorandum and Order of the Honorable William G. Cambridge, District Judge, April 3, 1990, p.2.

Prior to the hearing on competency on March 30, 1990, this Court issued a Memorandum and Order which embraced guidelines for the hearing based upon the ABA Criminal Justice Mental Health Standards, Standard 7-4.6a. The Magistrate noted as follows:

Any information or testimony elicited from the defendant King at any hearing or examination on competency or contained in any motion filed by the defendant to the court or to any person evaluating or providing mental health services, and any information derived therefrom and any testimony of experts or others based on information elicited from the defendant King, shall be considered privileged information and shall be used only in proceedings to determine Mr. King's competence to stand trial and related treatment or habilitation issues.

United States v. King, CR89-0-63, Findings and Recommendations of the Honorable Richard G. Kopf, United States Magistrate, dated March 29, 1990, p.1 (emphasis added).

At the hearing held on March 30, 1990, no live testimony was adduced and all records and documents relating to Mr. King's mental health were placed under seal by the Court. See, United States v. King, CR89-0-63, Findings and Recommendations of the Honorable Richard G. Kopf, United States Magistrate, dated March 30, 1990.

Furthermore, numerous orders have been entered during the competency proceedings in this case sealing all records of a medical or psychological nature. See, United States v. King, CR89-0-63, Memorandum and Orders of the Honorable Richard G. Kopf, United States Magistrate, dated March 9, 1990, March 30, 1990, August 28, 1990, September 4, 1990, September 5, 1990, and September 10, 1990. For example, transcribed telephone interviews between and among the Court, counsel and the medical personnel from both the Springfield and Rochester facilities have been sealed.

By Order dated May 3, 1990, this Court made Findings and Recommendations on the Defendant's Motion to Change Venue out of the District of Nebraska pursuant to Fed.R.Crim.P., Rule 21. The Court ruled that the Motion for Change of Venue should be denied without prejudice to reassertion during or after voir dire. In that Order, the Court stated as follows:

While agreeing that the publicity surrounding this case has been massive, and in some cases inflammatory, I disagree that the publicity has been sufficiently inflammatory so as to raise a presumption that venue ought to be changed prior [to] an effort to select a jury.

* * *

Suffice it to say the publicity has been extensive, and, regrettably, in some instances, inflammatory.

* * *

In the counties that comprise the Omaha and Lincoln jury wheels the publicity has been extensive. However, in the counties which comprise the North Platte jury wheel the publicity has been minimal, except for statewide circulation of the Omaha World Herald. (Exhibits 2, 4, 13, and 14 (received 4-16-90)).

United States v. King, CR89-0-63, Magistrate's Findings and Recommendations, the Honorable Richard G. Kopf, United States Magistrate, dated May 23, 1990, pp.1-2. The Honorable William G. Cambridge, United States District Judge adopted the Findings and Recommendations of the Magistrate regarding the Motions for Change of Venue. United States v. King, CR89-0-63, Memorandum Opinion and Order of the Honorable William G. Cambridge, United States District Judge, dated June 13, 1990.

ARGUMENT

At every stage of these competency proceedings, this Court has rightly attempted to ensure that the records and circumstances surrounding Mr. King's mental evaluation and treatment be kept confidential, privileged and to the extent possible under seal. The Defendant's interest in privacy and confidentiality as trial approaches is no less important at this stage of proceeding, as trial approaches. The passionate curiosity with which the media has covered this proceeding remains unabated.

The competency hearing is a pretrial proceeding. Thus, the constitutional right of the press to attend the trial itself is not involved in assessing this closure question. This competency proceeding involves disclosure of information more sensitive than even a suppression hearing in many respects. Questions relating to the attorney-client privilege, and the privilege as to psychological matters pronounced by this Court will inevitably arise at the competency hearing. Notwithstanding that Mr. King was forced to submit to the mental evaluations in question, disclosures made by him relevant to the competency issue not only will become known to the government, but may be evidenced at the hearing, notwithstanding their privileged character and their inadmissibility at the trial. By this Court's prior order, all psychological information adduced at the competency hearing will be inadmissible at the trial. However, the likelihood such disclosures will find their way into the public domain and into the minds of prospective jurors is manifest. Moreover, matters of a highly personal nature will inevitably be disclosed which are embarrassing to Mr. King and his family.

We have found no cases where the specific issue was the closure of a competency hearing and the attending pre-trial publicity associated with such a hearing. The most analogous cases appear to be where pre-trial suppression hearings were sought to be closed. The key argument in suppression cases such as Gannett,

supra, has been that pre-trial publicity could prejudicially affect the defendant because the confession could nonetheless come to the attention of potential jurors through the publicity. Where massive publicity exists, the purpose of a suppression motion is undercut. In the event the suppression motion is not granted, the confession or other evidence will eventually be used at trial against the defendant. In contrast here, this Court has already held that the information or testimony elicited from the Defendant is privileged and shall only be used in connection with the competency proceedings. See, United States v. King, CR89-0-63, Memorandum and Order of the Honorable Richard G. Kopf, United States Magistrate dated March 29, 1990.

The Defendant meets Justice Blackmun's three-prong test embraced in United States v. Powers, 622 F.2d 317. First, there is a substantial probability that irreparable damage to his fair trial right will result from conducting the proceeding in public. The news media has reported this case with a kind of voyeuristic curiosity not ever seen in this District. The publicity surrounding the Indictment, congressional and state grand jury investigations have been described in other briefs. To date, the commentary regarding Mr. King's competence--the issue squarely before the Court--has run rampant, suggestions having been made by many including high ranking public officials that Mr. King is devious, is faking it, is a con man and the like. Remarkably, the state grand jury, which carries the authority of the State of Nebraska, reported that many witnesses believed Mr. King to really be competent, the clear inference being that some manipulation had occurred in the prior competency proceeding. The only plausible argument that irreparable damage will not occur from an open competency hearing is that the devastating damage to Mr. King's right to a fair trial has already occurred.

Second, Mr. King has shown that there is a substantial probability that alternatives to closure will not protect

adequately his right to a fair trial. Alternatives to be considered would include holding the hearing immediately prior to sequestering the jury, using voir dire, continuance, severance, and admonitory instructions to the jury. None of these alternatives are workable or fair.¹

Based upon this Court's earlier findings regarding change of venue, the entire State of Nebraska through the massive circulation of the Omaha World Herald has been exposed to the publicity in this case. The Court has denied the Motion for Change of Venue without prejudice. However, the Court in Civella case, changed venue sua sponte based upon only "substantial" newspaper coverage in the limited area of Kansas City. Further, the Fifth Circuit in Chagra case clearly indicated that the Court in response to closure motion should consider an out of district change of venue in the event that pre-trial publicity is likely to harm the rights of the defendant to a fair trial.

Third, to the extent it is possible for Mr. King to get a fair trial in this District, closure of the competency hearing is the only effective alternative to protect against the inevitable harm which will occur from the microscopic media attention. Because the

¹The need for a prompt determination of competence is great. No further motions or proceedings can fairly go forward without Mr. King's participation. Thus, waiting until immediately prior to sequestering the jury is out of the question. The Court is not inclined to continue the case, and no continuance is likely to abate the massive publicity. Using voir dire, we submit, confronts defense counsel with the thankless choice of: 1. electing to question prospective jurors about the publicity, risking that jurors unaware of the publicity will become aware of it through questioning or, on the other hand, 2. electing not to question jurors about the publicity and risking that some jurors exposed to and prejudiced by it will be nonetheless seated on the jury. To rely on admonishing instructions would be, we submit, akin to allowing a drop of ink to fall into a glass of water, and asking the juror to pull the drop of ink out of the water. We seriously doubt any juror will be capable of effectively washing away the prejudicial pretrial publicity which has occurred here.

Court has consistently sealed the mental health records of Mr. King, there has been to date little or no public dissemination of information by the press about Mr. King's mental competency, except for the Court's Findings and Recommendations dated March 30, 1990. Closure of this hearing will serve to provide counsel with much greater latitude in fully and fairly airing evidence relevant to the competency determination. Mr. King's best interests require a full and fair competency hearing. Defense counsel should not be placed in the quandry of refraining to make an inquiry relevant to the competency question, in order to limit prejudice to Mr. King from the public disclosure of such information. There is a significant risk that an open hearing will stifle legitimate inquiry into the competency question.

This Motion places before the Court the question of closing the hearing to the press and public based on pre-trial publicity in addition to the concerns set forth in the earlier motion of the Defendant King through Mr. Stoler, Court-appointed counsel for an "in camera hearing". The earlier motion for an in camera hearing requested the exclusion of the government based upon the possible testimony of Mr. King's Court-appointed attorneys and the concurrent risk to the attorney/client privilege, the right against self-incrimination and privacy concernings of the Defendant. As previously noted, the hearing that was held on March 30, 1990 which led to the Court's finding that Mr. King was currently incompetent to stand trial in fact did not involve any live testimony, nor were any records unsealed for the public and press to review. The harm which was sought to be avoided by the Motion for an In Camera hearing, in fact, never occurred based upon the eventual disposition at the earlier hearing. Further, additional mental evaluations of Mr. King have taken place since the March 30, 1990 hearing and the risk of prejudicial publicity based upon Mr. King's testimony as elicited in those reports is exacerbated.

Based upon the media fury over this case, it is reasonable to

expect the reports of the psychiatrists will be published or reported in detail by the news media. While the psychological reports and records regarding Mr. King are sealed, counsel will request the Court to review the reports and other related documents to evaluate the nature of information elicited from Mr. King by the mental health professionals and their recording that information in reports and other documents. The commentary to standard 7-4.6 of the Criminal Justice Mental Health Standards expresses the concern which counsel has for publication of testimony or reports based upon Mr. King's elicited comments:

Standard 7-4.6 harmonizes the conflict between the judicial system's need to compel defendant cooperation in court-ordered competency evaluations and defendants' privilege against self-incrimination. If a court has a good-faith doubt about a defendant's present mental competence, it is obliged to resolve the issue promptly. That in turn requires an accurate professional assessment of mental condition that must rest, at least in part, on information supplied by a defendant, some or all of which may be incriminating because it relates to an alleged offense. Indeed, granted the nature of the techniques commonly used by qualified evaluators, a more serious infringement of self-incrimination protections may ensure than in the station house interrogation severely restricted by the Supreme Court in *Miranda v. Arizona*: Because evaluators occupy a somewhat ambivalent position, defendants may see them as a "helper, healer or sympathizer," even though they discharge an objective professional role on behalf of appointing or authorizing courts. Consequently, they often obtain information as adversaries. To require defendants to cooperate in interviews of this sort might well infringe [the] privilege against self-incrimination unless suitable safeguards as established. Standard 7-4.6 delineates those safeguards. (Footnotes omitted.)

Pp.199-200.

The critical issue relating to Mr. King's competency involves his ability to assist in his own defense. Of necessity, the mental health professionals have delved into that specific area which carries with it inherent risk to Mr. King's privilege against self-incrimination.

The Court need only examine the sealed reports of the various mental health professionals to determine the nature and the quantity of Mr. King's statements made during evaluation. Further, the Order of this Court finding Mr. King incompetent to stand trial clearly shows that a determination of Mr. King's competency requires detailed inquiry into the content and thought processes of Mr. King. In order for the Court to fully and fairly evaluate Mr. King's current competence to stand trial, the Court of necessity will question mental health professionals about Mr. King's communications.

Because the reports of mental health professionals have been sealed by the Court, it would be improper here to relate specific statements by Mr. King and arguments as to their possible prejudicial nature.² However, we ask that the Court review these reports in order to evaluate Mr. King's communication and the impact on potential jurors reviewing those communications through media coverage.

We emphasize that the opinions of the mental health professionals which will come to the media attention in the event the hearing is not closed have a strong probability of adversely affecting Mr. King's right to a fair trial. It is unrealistic to expect media coverage to narrowly and objectively discuss only the

²It would also be counterproductive, and this highlights the difficulty which massive media attention on the competency proceeding presents to defense counsel. If we make our argument by reference to specific facts and statements of Mr. King, we seriously risk the publication of such portions of our Brief, thus defeating the purpose for which the closure motion has been filed in the first place.

evidence introduced at the competency hearing. Specifically, following the Court's March 30, 1990 recommendations on Mr. King's competency, the Omaha World Herald interviewed various acquaintances of Mr. King who provided their own evaluation as to his competency. A local psychiatry resident was interviewed on all three local television stations offering his prognostications as to when Mr. King would return, what his prospects for recovery were, and so forth. Most recently, the Douglas County Grand Jury made the following evaluation as to Mr. King's competency:

Evidence and testimony heard regarding the issue of King's incompetence to stand trial for his crimes have shown much disagreement with the incompetency ruling. However, we did not have the benefit of any psychiatric evaluations performed on King. Almost without exception, friends, acquaintances, and former employees maintained that King is without a doubt mentally capable of standing trial and assisting in his own defense. King was uniformly regarded as a very clever and manipulative person.

Douglas County Grand Jury Report dated July 23, 1990 at page 3 as published in the Omaha World Herald.

The State Grand Jury report was forty-two (42) pages long and was published immediately following it's issuance, in its entirety, in the Omaha World Herald. This Court has previously noted the statewide saturation level of the Omaha World Herald. This is clearly prejudicial type of publicity which will impact Mr. King's right to a fair trial. This Court has no way of controlling the content of the media coverage and as demonstrated by the State Grand Jury Report, questions of competency turn into questions regarding character and credibility in the lay person's mind.

There should also be consideration given to Mr. King's privacy in regard to his medical records and his mental health. Congress has recognized this type of privacy through excluding medical records from the Freedom of Information Act. There is no question

that Mr. King was compelled to participate in the mental health evaluation process.

Whether the Court applies the test contained in Justice Blackmun's dissent contained in Gannett or the test contained in Justice Powell's concurring opinion in Gannett, we believe that the result would be the same. There not only is a "substantial probability that Mr. King's fair trial rights will be irreparably damaged if the competency proceeding is conducted in public; there is almost a guarantee that this damage will occur. This is directly related to the massive publicity that has surrounded this case and the nature of the evidence contained in the reports of mental health professionals and anticipated testimony. One does not have to strain the imagination to understand that if Mr. King chooses to testify at trial, specific information that was publicized from the competency proceeding could clearly influence a juror's determination of credibility. On the other hand, if Mr. King chooses not to testify at trial, one does not have to labor long to understand the potential impact of a juror being exposed to media coverage regarding not only the content of Mr. King's statement to the health professionals but also their specific opinions with regard to Mr. King's mental health.

There continues to be in this day and time a stigma attached to psychological treatment. Further, the legal determination of competency to stand trial and the standards to be applied are extremely complex and perhaps not understood by many attorneys. In view of this fact, the prejudice which may arise from media coverage of these proceedings cannot be underestimated. The determination of competency has been "slipped into" a question of insanity by the public. The State Grand Jury examined competency from the perspective of acquaintances of Mr. King and apparently reached a conclusion that Mr. King was "clever and manipulative". Media coverage of the prior competency proceeding quotes a number of individuals who opined that the competency proceeding was a

defense strategy. United States Representative Peter Hoagland voiced his opinion on KKAR Radio that the "psychiatrists need psychiatrists". Other media articles have conjectured that Mr. King had been sent to the United States Medical Center for Prisoners at Rochester, Minnesota in order to drug him and alter his mind. The newspaper, radio and television coverage of this case and specifically the competency proceedings to date have been very similar to the "circus atmosphere" identified in Sheppard v. Maxwell, *supra*. Beyond the specific examples of the type of coverage that has been experienced in this proceeding, there is still the grave concern that Mr. King's own statement via the mental health professionals will come to the attention of prospective jurors and these statements are clearly inadmissible based upon prior rulings of this Court. Prior publicity in this case only goes to show the nature and extent of the publicity which can be anticipated if the hearing is not closed.

It also is clear that if the hearing were closed the harm associated with inadmissible pre-trial publicity being heard by potential jurors would be eliminated. Of course, all transcripts and evidence from the hearing itself would also of necessity need to be sealed in order to avoid the damage to Mr. King's fair trial right.

CONCLUSION

In conclusion, the purpose of the competency hearing is not to inquire into the guilt or innocence of Mr. King. It is limited to a determination of competency. The testimony and evidence elicited at the hearing are privileged and the public and press cannot argue that they are entitled to information that no jury will ever be allowed to hear. The Defendant requests this Court to issue an order closing the competency hearing and sealing all transcripts and evidence elicited in connection with that hearing.

Respectfully submitted,

LAWRENCE E. KING, Defendant

By


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- and -


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Defendant's Brief in Support of Motion for Closure of Hearing and Sealing of Records was served by depositing in the U.S. Mail, postage prepaid on this 3 day of October, 1990 to Thomas D. Thalken, First Assistant U.S. Attorney, P.O. Box 1228 DTS, Omaha, NE 68101 and Jerold V. Fennell, Suite 225, Regency Court, 120 Regency Parkway Drive, Omaha, NE 68114.

Steve Achelpohl

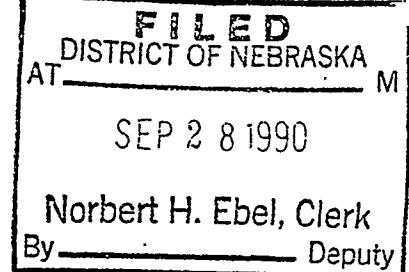
Steven E. Achelpohl
Marilyn N. Abbott

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
Plaintiff,)
LAWRENCE E. KING, JR., and)
ALICE PLOCHE KING,)
Defendants)

CR. 89-0-63

ORDER

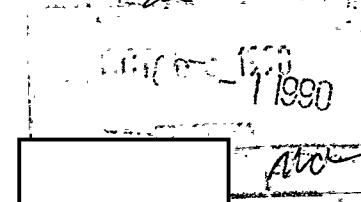


For purposes of determining Defendants' standing to assert
their Fourth Amendment suppression claims:

IT IS ORDERED:

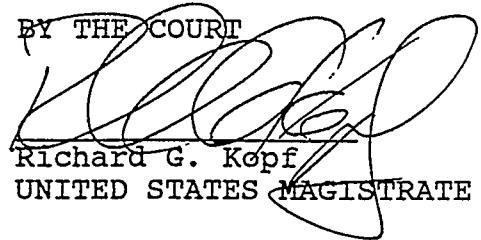
By October 12, 1990, the parties shall submit to the Court affidavits and itemized accompanying materials showing, with respect to (a) the execution of the November 4, 1988 search warrants, (b) the National Credit Union Administration's conservatorship order and takeover, and (c) the November 14, 1988 grand jury subpoena to the NCUA:

- (1) what areas of Franklin Community Federal Credit Union and Consumer Services Organization--
 - (a) defendants used as their personal office(s) (including secretarial space).
 - (b) defendants exercised exclusive right of entry or control of entry.
 - (c) employees of Franklin Community Federal Credit Union and Consumer Services Organization, but not the general public, were authorized to enter.
- (2) what items were seized within each of the areas listed in subparagraph (1).



(3) what items seized were--

- (a) personal property of the defendants;
- (b) within defendants' personal possession; and/or
- (c) reflected substantial personal input of defendants in their making or creation.

BY THE COURT

Richard G. Kopf
UNITED STATES MAGISTRATE

September 28, 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
Plaintiff,) CR. 89-0-63
vs.)
LAWRENCE E. KING, JR. and)
ALICE PLOCHE KING,)
Defendants.)

GOVERNMENT'S OPPOSITION
TO MOTION TO CLOSE COMPETENCY HEARING



Respectfully submitted,

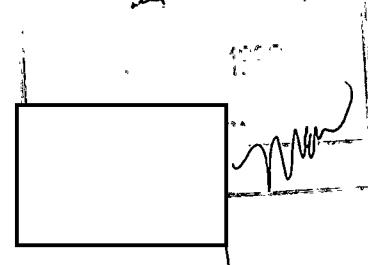
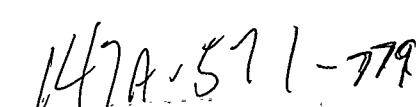
RONALD D. LAHNERS
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and

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and

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Defendant Lawrence E. King, Jr., has requested that this court close the evidentiary hearing scheduled for October 17, 1990, to determine his current competency. The government opposes closure.

The Supreme Court has found a right of public access to criminal proceedings in the First Amendment to the Constitution. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980). The Court has applied this concept to limit closure of voir dire, Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984), to strike down a state statute which excludes the public during testimony of a minor victim in a sex offense trial, Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982) and to limit closure of preliminary hearings, Press-Enterprise Co. v. Superior Court, 478 U.S. 1 (1986). While not providing a clear ruling on whether such right of public access applies to all pre-trial proceedings, nor specifying the standard that must be met -- and by whom -- to justify closure, the Court has stated that proceedings to which such right applies cannot be closed "unless specific, on the record findings are made demonstrating that 'closure is essential to preserve higher values and is narrowly tailored to serve that interest.'" 478 U.S. 1, 13.

The Eighth Circuit has provided a clear ruling on the standard that must be met -- and by whom -- in U.S. v. Powers, 622 F.2d 317 (8th Cir. 1980). In affirming the trial court's refusal to close a trial, the court held that to justify such closure, the defendant must establish each of the following:

- 2) substantial probability that alternatives are inadequate, and
- 3) substantial probability that closure will be effective.

Absent a standard specifically applicable to pre-trial proceedings, the trial court should look to this case for guidance.

Most cases that have considered the question have found insufficient justification for closure, confirming the heavy burden that must be met. Closure of voir dire was not justified in a trial for extortion where the victim was Senator Eagleton, United States v. Pulitzer Publishing Co., 635 F.2d 676 (8th Cir. 1980). Closure of hearings on suppression motions was not justified in an Abscam trial, United States v. Criden, 675 F.2d 550 (3rd Cir. 1982). Closure of parts of voir dire and various proceedings during trial of alleged Mafia defendants charged with RICO violations was not justified, United States v. Brooklier, 685 F.2d 1162 (9th Cir. 1982). Finally, closure of a pre-trial suppression motion was held not justified in Application of the Herald Co., 734 F.2d 93 (2nd Cir. 1984).

Two instances have been found where closure of certain criminal proceedings were held justified. Both involved bail or bond hearings where statements of the defendant which could be subject to suppression were likely to be introduced. Since revelation of such potentially inadmissible inculpatory statements could irreparably damage the defendant's right to a fair trial, closure was ordered. United States v. Chagra, 701 F.2d 354 (5th Cir. 1983); In re Globe Newspaper Co., 729 F.2d 47 (1st Cir. 1984).

Thus, in other circuits as well as this one, the burden on the defendant seeking to close a criminal proceeding is substantial and not easily met.

Furthermore, the harm to be prevented by closure is quite narrow. It is not the risk of publicity as such that may justify closure of a hearing; it is only the risk of prejudicial publicity that can warrant such an extreme measure. Prejudicial publicity has been discussed before with regard to Defendant's motion for change of venue. Prejudicial publicity includes publication of a defendant's prior criminal record, Marshall v. United States, 360 U.S. 310 (1959), especially if that record includes conviction for offenses similar to the one with which he is currently charged. This is prejudicial since it raises the risk that potential jurors may read of this and, consciously or subconsciously, rely upon such convictions in forming a decision as to guilt or innocence. Prejudicial publicity includes broadcast of a defendant's video-taped confession, a confession that was at least arguably inadmissible if not clearly so, Rideau v. Louisiana, 373 U.S. 723 (1963). Prejudicial publicity includes publication of other types of evidence which is directly related to the offense with which the defendant is charged and yet is or may be inadmissible at trial, Irvin v. Dowd, 366 U.S. 717 (1961).

No such risk is present here. The hearing sought to be closed is only to determine whether Defendant King is currently competent to stand trial. That involves a determination whether he is "suffering from a mental disease or defect rendering him

competent to stand trial. That involves a determination whether he is "suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." 18 U.S.C. §4241(a). This is not a case where the government seeks to introduce statements already made by the defendant which are inculpatory and which may be inadmissible. This is not a case where any evidence concerning the offense itself need be presented. The sole question to be decided is whether Lawrence King understands what is going on and can, if he so chooses, assist his attorneys in preparing his defense.

The only suggestion of potentially damaging matters which may be raised (and the tentative nature of this proffer should, by itself, demonstrate that the substantiality test of Powers has not been met) that defendant has made is that confidential communications between Mr. King and these attorneys may be presented. This is insufficient and, for that matter, irrelevant. It is not important whether Mr. King gets along with these particular attorneys. It is not important whether Mr. King chooses to raise certain defenses or indeed any defenses to the charges pending. It is only important that he understand the nature of the charges against him and be capable -- not willing, but capable -- of assisting in his own defense.

Competent psychological experts have had four months in which to evaluate Mr. King's current functioning and have found him

competent. Their testimony can be taken without treading upon confidential or privileged matters. If defense counsel wish to inquire into such confidential and privileged matters nonetheless, then that particular testimony could be taken in camera if the harm which would result rises to the Constitutional standard set forth above. Closure of the hearing as a whole is unnecessary to achieve such a limited result.

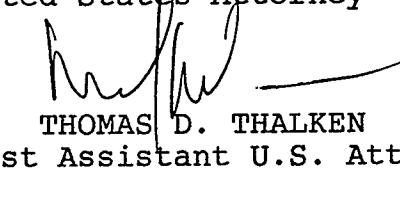
WHEREFORE the government respectfully requests this court deny defendant's motion to close the competency hearing currently set for October 17 through 19, 1990.

Respectfully submitted,

UNITED STATES OF AMERICA
Plaintiff,

RONALD D. LAHNERS
United States Attorney

By: THOMAS D. THALKEN
First Assistant U.S. Attorney


Joen Grant.

And: JOEN GRANT
Assistant U.S. Attorney
P.O. Box 1228-DTS
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(402) 221-4774

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing was served on the following by placing same in the U.S. Mails, postage prepaid, this 9th day of October, 1990:

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and hand delivering a copy to:

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KOLEY, JESSEN, DAUBMAN & RUPIPER, P.C.
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Suite 800
Omaha, Nebraska 68124

Joen Grant.

FEDERAL BUREAU OF INVESTIGATION

- 1 -

Date of transcription 10/5/90

[redacted] was telephonically interviewed by Special Agent (SA) [redacted] of the Federal Bureau of Investigation. [redacted] provided the following:

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[redacted] advised while employed at FRANKLIN COMMUNITY FEDERAL CREDIT UNION (FCFCU) as the Accountant, he remembers the following regarding access areas into FCFCU and CONSUMER SERVICES ORGANIZATION (CSO). [redacted] advised the door leading into the Administrative Assistant's area from CSO was a punch-button lock combination. Anyone from FCFCU or CSO had access to the area, in particular those employees who were required to travel back and forth between CSO and FCFCU. [redacted] advised the combination would be changed periodically. Anyone needing to use the bathroom or eat lunch in the downstairs area would have the combination.

(X)
mc

[redacted] was of the opinion all employees had the punch-button lock combination which was changed periodically by [redacted]

[redacted] advised the area leading into the bookkeeping where [redacted] all bookkeeping personnel, Assistant Manager, and head tellers had access was a control-key area. It was his opinion [redacted] did not have a control-key to get into the teller and bookkeeping area. [redacted] is of the opinion no other employees would have been given access to the bookkeeping and teller area.

[redacted] advised [redacted] office area was normally locked after normal operating hours of FCFCU. During the operating hours, his office was accessible by [redacted] Secretary to [redacted] or was routinely open for access. [redacted] advised inside [redacted] office his desk was always accessible and would not have been routinely locked. He recalls [redacted] only locking the credenza on the west wall of [redacted] office. He could not remember whether the roll-away file cabinets were locked. [redacted] advised he did not have access into [redacted] office unless [redacted] would allow him access. Access was controlled by either his secretary, [redacted] or by [redacted] himself. [redacted] was of the opinion [redacted] office or the contents of [redacted] office was only accessible to the above two individuals. No inventory of extra keys was kept in the key box area of FRANKLIN.

Investigation on 10/3/90 at Omaha, Nebraska File # OM 147A-571-780
 by SA [redacted] Date dictated 10/3/90

[redacted]
GMC

OM 147A-571

Continuation of FD-302 of [redacted], On 10/3/90, Page 2 b6
b7c

[redacted] advised [redacted] secretarial area was locked by [redacted] after normal business operating hours of FCFCU and was only accessible by [redacted]. He is of the opinion her area was not accessible on an emergency basis and no extra keys were kept in the key box area.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
Plaintiff,) CR. 89-0-63
vs.)
LAWRENCE E. KING, Jr. and)
ALICE PLOCHE KING,)
Defendants,)

SUPPLEMENTAL MEMORANDUM ON THE
DEFENDANT'S APPEAL FROM MAGISTRATE'S
ORDER REGARDING CLOSURE

DL
mc

RESPECTFULLY SUBMITTED,

RONALD D. LAHNERS
United States Attorney
District of Nebraska

and

THOMAS D. THALKEN
First Assistant U.S. Attorney
District of Nebraska

and

JOEN GRANT
Assistant U.S. Attorney
District of Nebraska
P.O. Box 1228-DTS
Omaha, Nebraska 68101

147A-577-781

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<i>J. Allen</i>	

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In April, 1990, defendant Lawrence E. King, Jr. was found incompetent to stand trial and committed to the Federal Medical Center at Rochester, Minnesota. On August 28, 1990, that facility returned a report finding him competent. A hearing is to be held on this issue beginning October 17, 1990. Defense counsel have asked that this hearing be closed to the public on various grounds. Magistrate Kopf issued an Order addressing the competing interests involved, from which defense counsel appeal to this court.

It is important initially to recognize the limited nature of the hearing. The sole question presented is whether Mr. King is now competent to stand trial. That is, does he understand the nature of the proceedings and is he able to assist in his own defense. See, Blackmon v. Armontrout, 875 F.2d 164, 166 (8th Cir.), cert. denied, 107 L.Ed. 2d 236 (1989); Beans v. Black, 605 F.Supp. 342 (D.C.Nebr. 1984), aff'd, 757 F.2d 933 (8th Cir.), cert. denied, 474 U.S. 979 (1985). To be competent, Mr. King must be oriented as to place, time, and people, he must be able to recall events and to relate them, and he must have

sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding--and [have] a rational as well as factual understanding of the proceedings against him.

Dusky v. United States, 362 U.S. 402 (1960). Justice Marshall elaborated on this definition in his dissent to denial of certiorari, White v. Estelle, 459 U.S. 1118, 1125 (1983), saying "The court also must take into account . . . the defendant's ability to reason, to remember, to cooperate, and to communicate."

Competency does not depend on a defendant's willingness to communicate with defense counsel -- only on the defendant's ability to do so. Thus, in Ray v. Duckworth, 881 F.2d 512 (7th Cir. 1989), the defendant was found competent based on expert medical opinion even though defense counsel stated that Ray would not answer any of his questions about the offense. Similarly, in the face of divergent testimony from psychiatrists on competence, the trial judge found the defendant competent in United States v. Velasquez, 885 F.2d 1076 (3d Cir. 1989). The court there noted that the defendant

was merely exercising poor judgment in not disclosing certain information to her counsel, but that, however irrational her decisions not to disclose information were, she was not incapable of assisting counsel by reason of mental defect. Id. at 1089-1090.

It is against this background that the request to close the hearing should be considered.

Because the question presented is so narrow, many of defense counsel's fears are unfounded. Confidential communications need not be disclosed; defense strategy need not be revealed. This is not a case where testing defendant's ability to recall events necessarily amounts to a confession, as in Ray v. Duckworth, supra. Thus, the Magistrate's example at the hearing on the motion for closure is inapposite. He had drawn a parallel between the publicity likely to arise from the competency hearing and from the pre-trial release of an inadmissible confession. The difference is in the degree of prejudice likely to arise in any potential jurors. Once it is generally known that the defendant confessed

to the crime charged, it would be the exceptional person who could completely expunge that confession from consciousness and render a verdict solely on the basis of evidence presented at trial. No such risk is present here. Inadmissibility should not be the test but one of substantial prejudice. It is true that there may be publicity, and it may be critical of Mr. King. In view of the nature of this case, however, it is unlikely to prejudice his ability to obtain a fair trial before an impartial jury when this case is finally presented.

The briefs already submitted by the government and by the World-Herald adequately explore the standards governing closure of criminal pre-trial proceedings. That issue will not be discussed again here. Applying those standards, the Magistrate fashioned an order that more than amply meets any legitimate concerns of the defense. In fact, it goes too far.

In ruling five, the government is precluded from calling any witnesses, even though the government's interest in full and fair exploration of the issue is at least as great as that of any other party to this action. There is no reason for such limitation and none has been provided in the Magistrate's Order. This part of the Order should be stricken.

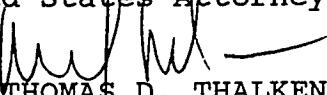
One other aspect of the Order is inappropriate. The sole question is the ability of Mr. King to assist in his defense, yet he is the one witness permitted to "testify" entirely through other people. Ruling thirteen should be stricken. Mr. King's own tes-

timony is at the heart of the proceeding and should not be presented by hearsay.

With these adjustments, the Magistrate's Order is a reasoned balancing of the competing interests involved in the competency hearing, given the limited nature of the question presented, and should be adopted by the court.

Respectfully submitted,

RONALD D. LAHNERS
United States Attorney

By: 
THOMAS D. THALKEN
First Assistant U.S. Attorney


By: JOEN GRANT
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing was served on the following by placing same in the U.S. Mails, postage prepaid, this 15th day of October, 1990.

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and hand delivering a copy to:

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Omaha, Nebraska 68102-1908

Joan Frank.

SO OCT 15 PM 2:25

ROBERT H. KIRCHNER
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

NATIONAL CREDIT UNION)
ADMINISTRATION BOARD, as)
Liquidating Agent for FRANKLIN)
COMMUNITY FEDERAL CREDIT)
UNION,)
Plaintiff,)
vs.)
LAWRENCE E. KING, JR.,)
Defendant,)
UNITED STATES OF AMERICA,)
Intervenor.)

CV 88-0-819
MEMORANDUM
and
ORDER

(K)
Ma
This matter came on for expedited hearing on January 5, 1990. The hearing concerned the plaintiff National Credit Union Administration Board's (NCUAB)'s appeal (Filing No. 180) and the appeal filed by the United States of America ("government") (Filing No. 177), as intervenor, of the Magistrate's January 4, 1990 order (Filing No. 176), granting in part and denying in part the defendant Lawrence E. King Jr.'s motion for protective order with regard to the taking of a deposition of an expert witness, Robert Kirchner. Present at the hearing were counsel for the NCUAB, counsel for the government and King's court-appointed criminal defense counsel.¹ At the hearing, on its own motion, the court

¹King's court-appointed criminal defense counsel have been permitted to enter a limited appearance in this civil action (Filing Nos. 123 and 159, pages 3-4 & n.4); (CR 89-0-63, Filing No. 40).

indicated that due to the complexity and interplay of the discovery matters in the civil action and related criminal action, United States v. Lawrence E. King Jr., et al., CR 89-0-63 (D. Neb. May 15, 1989),² it would reconsider King's motion to temporarily stay the civil proceedings in this case pending the resolution of the criminal action. The court requested the parties to brief the merits of the NCUAB's and the government's appeals from the January 4, 1990 order of the Magistrate. The court also requested the parties to brief the issue of whether a temporary stay of the civil proceedings pending resolution of the pending criminal action should be entered. The court then ordered that the taking of the Kirchner deposition be temporarily stayed³ and that all civil proceedings relating to the Kings and the insolvent Franklin Community Federal Credit Union be temporarily stayed⁴ until such

²The hearing was held in both this civil action as well as the criminal action (CR 89-0-63, Filing No. 129). In the criminal action, the Magistrate ordered that King's court-appointed counsel were authorized pursuant to the Criminal Justice Act, 18 U.S.C. § 3001, et seq., in this civil action as well as in related civil actions, to take the Kirchner deposition for the limited purpose of defending the attorney-client privilege and to incur related expenses (CR 89-0-63, Filing No. 124). The Magistrate later denied (CR 89-0-63, Filing No. 127) the government's motion for reconsideration (CR 89-0-63, Filing No. 125) of that order. The hearing, therefore, was also held on the government's appeal in the criminal action (CR 89-0-63, Filing No. 128) of the Magistrate's order denying reconsideration.

³The Kirchner deposition was temporarily stayed in this civil action as well as in NCUAB v. Consumer Services Organization, Inc., CV 89-0-99 (D. Neb. Feb. 3, 1989) and United States v. Lawrence E. King, Jr., et al., CR 89-0-63 (D. Neb. May 15, 1989).

⁴Other civil cases temporarily stayed were NCUAB v. Consumer Services Organization, Inc., CV 89-0-99 (D. Neb. Feb. 3, 1989) and NCUAB v. Alice P. King, CV 88-0-918 (D. Neb. Dec. 23, 1988). The temporary stay was vacated in NCUAB v. Consumer Services

time that the court could review the parties' briefs and rule on the matters presented in the appeals now before the court.

I. BACKGROUND

On July 6, 1989, Steven Achelpohl and Marilyn Abbott, court-appointed defense counsel for Lawrence E. King, Jr. ("King") in the ancillary criminal proceeding, CR 89-0-63, filed a limited appearance of counsel in this case (Filing No. 123). Such appearance was allowed by the court to permit counsel to protect defendant King's constitutional rights in the criminal action, and to contribute in some significant way to the defense of the principal criminal charge, and to aid in their preparation of King's defense in the criminal action (CR 89-0-63, Filing No. 40).⁵ To date, Mr. Achelpohl and Ms. Abbott continue to represent King in their limited capacity in this civil action; beyond such

Organization, Inc., CV 89-0-99 (CV 89-0-99, Filing No. 53), however, and judgment has been entered in this case (CV 89-0-99, Filing No. 56).

⁵In granting defense counsel's application for limited appearance, the magistrate stated that it was not the court's intention to authorize Mr. Achelpohl and Ms. Abbott to do the following in the civil case, CV 88-0-819:

1. Initiate discovery;
2. Assist the defendant King in avoiding civil liability, except to the extent necessary to protect a constitutional or statutory right existing in the pending criminal case; or
3. To take any action which would substantially frustrate the law as it presently exists with regard to the prosecution and defense of federal criminal matters, such as, but not limited to, the Federal Rules of Criminal Procedure, the Jencks Act, the Criminal Justice Act or the like.

(CR 89-0-63, Filing No. 40, at 4).

representation, the defendant is proceeding in this action pro se.

Events indirectly giving rise to the controversy presently before the court occurred as follows. On October 2, 1989, King filed a motion for protective order (Filing No. 137). The motion referred to a request for production of documents and a set of interrogatories served by the NCUAB on King as well as a notice of records deposition served on the law firm of Erickson & Sederstrom, P.C. The request for production of documents requested production and the opportunity to inspect and copy all documents not previously produced or received by King or his previously retained counsel from Erickson & Sederstrom which relate to the defendant, Alice P. King, related entities or corporations or any trusts established by the defendant or Mrs. King (Filing No. 137, Exh. A). In the NCUAB's first set of interrogatories, the one interrogatory propounded asked for a description, as specific as possible without disclosing the contents, of any document withheld from production in response to the above-described request for production based on the attorney-client privilege or work-product doctrine. Specific details were requested, e.g., the nature of the document, details regarding the author, date of writing, addressee, persons receiving copies, location and custodian, and specific reasons why the document was withheld from production (Filing No. 137, Exh. B). In the notice to take deposition of Erickson & Sederstrom, the deponent was to bring all files and documents relating to the Kings, related entities or corporations and any trusts established by the Kings (Filing No. 137, Exh. C). In his

motion for protective order, King objected primarily on the grounds that such requests violate his fifth amendment right against self-incrimination.

Also on October 2, 1989 King moved for a stay of discovery in this case pending resolution of the pending criminal action. King primarily asserted that allowing the NCUAB, as an agency of the government, to continue discovery in this civil action would jeopardize King's fifth amendment right against self-incrimination and would be in contravention of Federal Rules of Criminal Procedure 15 and 16 (Filing No. 138).

On October 24, 1989 the NCUAB filed, pursuant to Federal Rule of Civil Procedure 37(a), a motion to compel King and the law firms Schumacher & Achelpohl and Erickson & Sederstrom to produce documents and answer interrogatories, thereby in essence produce all documents which would be included in the above-described notice to take deposition and request for production (Filing No. 141).

A hearing was held on December 4, 1989 before the Magistrate regarding the defendant's motion for protective order (Filing No. 137), the plaintiff's motion to compel (Filing No. 141), and the defendant's motion to stay discovery (Filing No. 138).

On December 13, 1989 the Magistrate ruled on the defendant's motion for protective order (Filing No. 137) and the plaintiff's motion to compel (Filing No. 141) only with regard to the King's assertion of the privilege against self-incrimination (Filing No. 159). The Magistrate denied the plaintiff's motion to compel (Filing No. 141) in part as to documents with respect to which King

claimed the fifth amendment privilege, and granted in part the defendant's motion for protective order (Filing No. 137) insofar as the NCUAB was ordered not to seek documents as to which the fifth amendment privilege was claimed. The Magistrate denied as moot the motion for protective order as to Erickson & Sederstrom, as it appeared that that law firm no longer possessed any relevant documents. He deferred ruling on the attorney-client privilege and work-product doctrine claims and the request for a stay of discovery (Filing No. 159). A hearing as to attorney-client and work-product issues was then set for mid-January (Filing No. 162) but has been delayed pursuant to the temporary stay in these proceedings later entered at the hearing on January 5, 1990 (Filing No. 179).

Events more directly giving rise to the instant controversy began when King, on December 28, 1989, filed a notice to take the deposition duces tecum of Robert Kirchner (Filing No. 168) on the NCUAB. Mr. Kirchner, an accountant retained by the NCUAB to reconstruct the financial records of the failed Franklin Community Federal Credit Union and used by the government before the grand jury in the criminal investigation, was directed to bring certain records and documents set forth in twelve categories (Filing No. 168, Exh. A). On the same date, King filed a motion for a protective order, stating that he wishes to take the Kirchner deposition "to prepare to defend the attorney/client privilege and

work-product doctrine" (Filing No. 169).⁶ King stated that during the deposition he would reveal his defense strategy for the pending criminal action. Therefore, King requested that a protective order be issued requiring the following: that the deposition be conducted with no one present other than the attorneys for the parties, the witness and the court reporter; that all persons present be ordered not to reveal the contents of the deposition to anyone not present at the deposition including, but not limited to, the United States Attorney; that upon completion of the deposition the transcript be sealed by the court; that if the witness does not waive reading of the deposition the witness shall not copy or reveal the contents of the deposition; that any copies of the deposition shall be given only to attorneys for the parties in this action and be held in a secure place; that the original deposition and copies remain sealed until the pending criminal action is terminated--including the exhaustion of all appeals, all proceedings under 28 U.S.C. § 2255 and other post-conviction proceedings, if any (Filing No. 169).

On January 2, 1990 the United States of America, pursuant to Federal Rule of Civil Procedure 24(b), filed a motion to intervene in this action to oppose the entry of a protective order excluding a United States Attorney from attending the Kirchner deposition. Also, the United States requested permission to intervene "as necessary" in later instances when the defendant in the civil

⁶King seeks to defend the attorney-client privilege and work-product doctrine against a crime-fraud exception argument asserted by the NCUAB. This issue is more fully described in section II(A)(2)(b) of this memorandum and order.

action seeks to depose witnesses who will be called as witnesses by the United States in the criminal action (Filing No. 170).

On January 2, 1990 a hearing was held before the Magistrate on the defendant's motion for protective order (Filing No. 169) and the United States' motion to intervene (Filing No. 170). Both motions were submitted (Filing No. 171).

On January 3, 1990 the NCUAB filed a motion to quash a subpoena duces tecum served on or about December 29, 1989 on Kirchner, requiring him to appear at a records deposition on January 3, 1990. Among other things, the NCUAB argues that the documents sought in categories one through eleven are not relevant to the subject matter of the action nor reasonably calculated to lead to the discovery of admissible evidence, and that the documents sought are protected by the attorney-client privilege and work-product doctrine (Filing No. 173).

On January 4, 1990 an amended notice of deposition duces tecum was filed requiring Kirchner to appear on January 11, 1990 for the records deposition (Filing No. 174).

On January 4, 1990, the Magistrate: (1) granted the government's motion to appear as an intervenor in this civil case (Filing No. 170) for the limited purpose of contesting the taking of the deposition of Mr. Kirchner, and matters related directly thereto, and otherwise denied the motion; (2) denied the NCUAB's motion to quash (Filing No. 173), except that the Magistrate provided a procedure whereby the NCUAB was allowed to withhold from production documents allegedly subject to the attorney-client

privilege or work-product doctrine, describe such documents and why they should be withheld from production, and King could then file a motion to compel; and (3) granted in part and denied in part King's motion for protective order (Filing No. 169), as follows:

(a) the deposition of Kirchner (deposition) shall be conducted with no persons present other than attorneys for the parties (excluding the Government), the witness's personal attorney, and the court reporter; (b) all persons present at the deposition are ordered not to reveal the contents of the deposition to any person not present at the deposition, including but not limited to the United States Attorney for the District of Nebraska; (c) upon completion of the deposition, the deposition transcript is ordered sealed; (d) if the witness does not waive the reading and signing of the deposition, the witness shall not copy or reveal the contents of the deposition during the reading and signing; (e) any copies of the deposition shall be given only to the attorneys for the parties (excluding the Government) to this action, and then the copies shall be held in a secure place; (f) the original deposition and copies shall remain sealed until further order of the court, except as provided in subparagraph (g); (g) King's court-appointed counsel shall provide a copy of the deposition to counsel for the Government, upon request, immediately after Kirchner completes his direct testimony adduced by the Government in the criminal case; (h) the defendant King shall not during the deposition inquire about what Kirchner literally and actually saw, heard or said when appearing before the grand jury; (i) the defendant King shall limit all inquiries at the deposition to matters which are relevant or which may lead to the discovery of admissible evidence regarding the crime-fraud exception to the attorney-client privilege claim relating to the "Erickson & Sederstrom" documents; (j) if necessary, the undersigned magistrate will be available by telephone or in person to rule upon the propriety of specific questions.

(Filing No. 176, at 14-15). The Magistrate considered his order final for the purposes of appeal and stayed the order until the close of business on Friday, January 5, 1990.

On January 4, 1990 the United States entered its notice of appeal (Filing No. 177), objecting to the protective order entered

in that it denies the United States the opportunity to have any knowledge of Kirchner's testimony. The United States also objects to the order on the grounds that the Magistrate denied the United States the right to intervene in further instances where King might seek to depose, for purposes of this civil action, other witnesses who will be called by the United States in the criminal action.

On January 5, 1990 the NCUAB entered its notice of appeal (Filing No. 180), objecting primarily on the grounds that the order effectively prohibits counsel for the NCUAB from revealing the contents of the deposition to officers, employees of or general counsel to the NCUAB, thereby not allowing for internal decision-making by the NCUAB.

An expedited hearing was then held (Filing No. 179) on the appeals of the NCUAB (Filing No. 180) and the United States (Filing No. 177) to the Magistrate's order (Filing No. 176). Posthearing briefs were requested regarding the merits of the NCUAB's and the government's appeals from the January 4, 1990 order of the Magistrate as well as regarding the defendant's motion to stay the civil proceedings in this case pending resolution of the criminal proceeding.

II. DISCUSSION

A. APPEALS

In an appeal from a Magistrate's order, the court must set aside any portion found to be clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); Local Rule of Practice 49(A).

1. APPEAL OF THE NCUAB (Filing No. 180)

The NCUAB's appeal is very limited. The NCUAB primarily objects to the order only on the grounds that the order does not presently allow for the disclosure of the contents of the deposition to Robert Fenner, general counsel to the NCUAB, or James Stewart, a Washington, D.C. attorney. Plaintiff's Brief on Motion for Stay and Appeals from the Magistrate's Order of January 4, 1990 [hereinafter Plaintiff's Brief] at 11-12.

King does not oppose a modification of the order to allow for the review of the deposition transcript by Mr. Fenner and Mr. Stewart. King asks that Mr. Fenner and Mr. Stewart be subject to the same provisions regarding nondisclosure as all persons present at the deposition. Brief of Defendant on Appeals from the Magistrate's Order of January 4, 1990 and Motion for Stay of Civil Proceeding at 5.

Under the circumstances, and in view of the positions of the parties, I find it reasonable to modify the order to allow for review of the deposition transcript by Mr. Fenner and Mr. Stewart. In allowing such review, counsel for the NCUAB is reminded of paragraph 3(e) of the order which provides that copies of the transcript be kept secure. Moreover, Mr. Fenner and Mr. Stewart are subject to the same provisions regarding nondisclosure as are all persons who will be present at the deposition.

Therefore, the appeal of the NCUAB is granted as to the above-described modification to the protective order and is otherwise denied.

2. APPEAL OF THE UNITED STATES (Filing No. 177)

The United States, in its notice of appeal, objected to the protective order entered because the Magistrate denied the United States the right to intervene in further instances where King might seek to depose, for purposes of this civil action, other witnesses to be called by the United States in the criminal action.

More importantly, the United States also objected to the order because the United States is denied the opportunity to have any knowledge of Kirchner's testimony, and that therefore counsel for King could obtain a tactical advantage in the trial of the criminal case, CR 89-0-63.

a) RIGHT TO INTERVENE IN FUTURE SIMILAR INSTANCES

Permissive intervention pursuant to Rule 24(b) is allowable when a prospective intervenor's claim or defense and the main action have a question of law or fact in common. FED. R. CIV. P. 24(b). In exercising its discretion on the question of permissive intervention, the court is to consider whether intervention would "unduly delay or prejudice the adjudication of the rights of the original parties." Id.

In the situation regarding Kirchner, the intervention of the United States did not result in undue delay or prejudice. In order to determine the question of undue delay or prejudice as that question relates to this case, in view of its relation to the pending criminal action, the court must make such determinations on a case-by-case basis. In denying the relevant portion of the motion of the United States to intervene, the Magistrate did not

do so with prejudice or in any manner preclude the United States from renewing this portion of its motion as necessary. Moreover, the Magistrate, in a previously issued order, stated:

While some civil discovery devices may well frustrate the Federal Rules of Criminal Procedure in a given circumstance, the court should deal with those questions on a case-by-case basis. I will leave it to the United States to seek a protective order in the civil case if it believes that its interests are being harmed in the criminal case should King pro se or with retained counsel seek discovery in the civil case.

(Filing No. 159, at 4 n.4).

Under the appropriate standard of review, therefore, the United States' appeal insofar as it relates to the question of allowing the United States, at this time, permission to intervene in future similar circumstances is denied. The portion of the Magistrate's order denying the ability of the United States to intervene at this time in the event that future similar situations might arise is affirmed.

(b) PROTECTIVE ORDER

The Magistrate framed the issues in question as follows:

(1) to what extent should King's court-appointed counsel in a related criminal case, who have been authorized to enter a limited appearance in the civil case, be authorized to probe by way of deposition the knowledge of the expert witness Kirchner, retained in the civil case by the NCUAB and used by the Government before the grand jury, and who is likely to appear in the criminal case as a Government witness, regarding the actions of King and the Franklin Community Federal Credit Union (Franklin) and related entities as those actions might bear upon the crime-fraud exception to the attorney-client privilege regarding the so-called Erickson & Sederstrom documents, when the NCUAB seeks to pierce King's attorney-client privilege in the civil case; and (2) to what extent should the Government be precluded from participating in the civil deposition of Kirchner,

or otherwise be prohibited from receiving information about the civil deposition of Kirchner.

(Filing No. 176, at 1-2).

As determined by the Magistrate, the evidence sought by King is relevant under Federal Rule of Civil Procedure 26(b)(1). King seeks the deposition testimony of Kirchner to defend the attorney-client privilege and work-product doctrine against the crime-fraud exception⁷ claim asserted by the NCUAB relating to the so-called "Erickson & Sederstrom" documents, documents which were at one time in the hands of Erickson & Sederstrom, which at one time provided legal services to King. The crime or fraud urged by the NCUAB in advancing its crime-fraud exception argument is that "Mr. King during 1986, 1987 and 1988 was . . . utilizing the services of Erickson & Sederstrom to stall the efforts of the IRS to obtain documents from the Credit Union relating to his receipt of funds from the Credit Union."⁸ Plaintiff's Brief at 14. Clearly, as an accountant who reconstructed the financial records of Franklin and has specific testimony to offer regarding the "amounts of money [allegedly] misappropriated by or at the direction of the defendant, Lawrence E. King, Jr." (Filing No. 149), the testimony of Kirchner and the documents requested are relevant within the broad Rule 26(b)(1) relevancy standard, see 8 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2008 (1970 & Supp. 1990),

⁷The crime-fraud exception is found at Neb. Rev. Stat. § 27-503(4) (Reissue 1989).

⁸The NCUAB's claimed crime or fraud has not yet been proven; this claim will be argued at a later date (Filing No. 159).

insofar as King has a right to discover the basis of the NCUAB's crime-fraud claim in order to defend the attorney-client privilege and work-product doctrine. As determined by the Magistrate, Rules 26(b)(3) and 26(b)(4) are not violated by discovery regarding Kirchner.

The Magistrate specifically found in this case, and has also previously found in the pending criminal case, "that the attorney-client privilege is so important to the **criminal** case that King's court-appointed lawyers must be authorized to challenge the issue in the civil case in order to adequately defend King in the criminal case." (Filing No. 176, at 3-4 (footnote omitted)). This finding is not clearly erroneous and, through the protective order entered by the Magistrate, the rights of the government in the criminal case are protected.

The government argues that it would be precluded from competently preparing Kirchner as a witness in its case-in-chief in the pending criminal matter as a result of being excluded from the deposition and not being able to read the deposition transcript.

King's counsel, on the other hand, asserts that King's defense strategy in the criminal action will be disclosed during the Kirchner deposition and argues that there is no disadvantage to the government as normally King would not be able to take Kirchner's deposition and therefore the government normally would not have access to such a deposition. Therefore, defense counsel argues that the government is not precluded from competently preparing a

witness because it does not receive access to something to which it normally would not have access.

The Magistrate is correct in concluding that the government will not be unduly disadvantaged to place King in essentially the same position as the government in the criminal action,⁹ given that King has no choice but to defend himself in this civil action and is entitled to take Kirchner's deposition in the civil matter.

If the government were allowed access to the deposition or deposition transcript, however, King would be unduly prejudiced because his defense strategy in the criminal case would be revealed to the government.

Therefore, under the appropriate standard of review, the appeal of the United States is denied as it relates to the protective order, and the order of the Magistrate is affirmed.

B. STAY

On June 26, 1989 King moved to stay this civil action until resolution of the pending criminal case (Filing No. 117). On July 6, 1989 I denied the motion without prejudice (Filing No. 125). On October 2, 1989 King, through his counsel, moved to stay discovery in this case pending resolution of the criminal case (Filing No. 138). A hearing was held on this motion on December 4, 1989, and the motion was submitted (Filing No. 151). On December 13, 1989 the Magistrate stated that the issue would be

⁹The government has had the advantage of hearing Kirchner's testimony before the grand jury, which King of course has not heard, and King is not entitled under Federal Rule of Criminal Procedure 16(a)(2) to Kirchner's statements to the government until Kirchner testifies at trial.

resolved at a later hearing (Filing No. 159), but this "later hearing" never occurred due to the temporary stay entered in all civil cases involving the Kings and the Franklin Credit Union on January 5, 1990 pending the resolution of the matters involved in this appeal (Filing No. 186, Tr 2:16-22; 3:11-13). Also on January 5, 1990, at the hearing held on this appeal, I requested the parties to brief the issue of a temporary stay of all further proceedings in any civil cases involving the Kings and the Franklin Credit Union pending resolution of the pending criminal matter.

The NCUAB opposes the stay. The United States is in favor of a stay in the event that the Magistrate's order granting the protective order is affirmed, which it has been with one minor modification made pursuant to the parties' agreement. Government's Statement in Support of Appeal from Magistrate's Order at 6.

The Constitution does not require a stay of civil proceedings pending the outcome of criminal proceedings. However, a court may decide to stay a civil action pending the outcome of criminal proceedings "'when the interests of justice seem . . . to require such action.'" Kashi v. Gratsos, 790 F.2d 1050, 1057 (2d Cir. 1986) (quoting United States v. Kordel, 397 U.S. 1, 12 n.27 (1970) (citations omitted)). A stay of a civil proceeding pending the outcome of a related criminal proceeding is "an extraordinary remedy for extraordinary circumstances." See Weil v. Markowitz, 829 F.2d 166, 174 n.17 (D.C. Cir. 1987).

One test frequently used to determine whether a stay should be granted in this situation consists of an analysis of four

factors: "1) the likelihood of the moving party ultimately prevailing on the merits; 2) the extent the moving party would be irreparably harmed; 3) potential for harm to the opposing party if the stay is issued and 4) whether issuing a stay would be in the public interest." Guirola-Beeche v. United States Dep't of Justice, 662 F. Supp. 1414, 1417 (S.D. Fla. 1987). Even if the first factor weighed strongly in favor of the defendant, if the other three weigh strongly in favor of the plaintiff, the extraordinary remedy of a stay should not be employed. Garcia-Mir v. Meese, 781 F.2d 1450, 1455 (11th Cir. 1986).

As to the first factor, which has been viewed as the most important factor, id., I cannot at this point state my view as to the possibility of the defendant prevailing on the merits. First is the matter of the plaintiff's motion for summary judgment (Filing No. 108) and the court's related ruling. The defendant resisted consideration at this time of the plaintiff's motion for summary judgment. The defendant's position was that, pursuant to Federal Rule of Civil Procedure 56(f), he was unable to defend his case for reasons relating to desired discovery and the defendant's fifth-amendment right against self-incrimination. I denied the plaintiff's motion for summary judgment without prejudice to reassertion once the defendant has had a fair and reasonable opportunity to conduct appropriate pretrial discovery. In addition, the discovery deadline was to run in February of 1990 (Filing No. 86). This case was then temporarily stayed on January 5, 1990. The discovery and motion deadlines, therefore, have not

yet passed. In summary, due to the progression of the case at this point, I am not in a position to determine the likelihood of success of the defendant. This factor, therefore, despite its importance, is a neutral one at this time.

As to the second factor, at this point I see no irreparable harm to the defendant if the request for a stay is denied. It has been stated that the court may use, in addition to a stay of proceedings, other devices such as protective orders, to protect the rights of persons in King's situation. SEC v. Dresser Indus., Inc., 628 F.2d 1368, 1376 (D.C. Cir.), cert. denied, 449 U.S. 993 (1980). As I stated above, the protective order entered by the Magistrate serves such a purpose at the present time. This factor, therefore weighs in favor of the plaintiff.

As to the third factor, if a stay is entered, the plaintiff might experience irreparable harm. As the Magistrate stated:

[S]taying consideration of the motion to compel may irreparably injure the NCUAB, as the NCUAB tells me that it needs a resolution of the motion to compel prior to trial and that time constraints, including statute of limitation and malpractice liability coverage matters, may preclude the NCUAB from seeking judgment against others unless the NCUAB proceeds rapidly.

(Filing No. 176, at 8). Therefore, the third factor weighs in favor of the plaintiff.

As to the fourth factor, the issuance of a further stay would not be in the public interest. As stated by the NCUAB in its brief, this is a proceeding brought by the NCUAB acting as a liquidating agent for the allegedly defrauded Franklin Credit Union, and standing in the shoes of depositors and other creditors

of the credit union. The suit was brought to recover funds to the liquidating estate of the credit union so that the insurance fund and creditors of the credit union may be reimbursed to the maximum extent possible. Plaintiff's Brief at 5.

Related to the public interest factor is the argument presented by the NCUAB that a stay would violate 12 U.S.C. § 1787(a)(1)(A)¹⁰ and 12 U.S.C. § 1787(j)¹¹ in that if a stay were entered, the NCUAB would not be able to perform its statutorily created duties which include collecting obligations to the credit union and settling or releasing claims in favor or against the credit union. Id. at 1-2. No authority is cited in support of this argument, and none can be found which directly supports the argument as it relates to the cited statutes. However, one court denied a request for a stay because the court determined that a stay would have interfered with the Federal Deposit Insurance Corporation ("FDIC")'s statutory duties to preserve and liquidate the assets of a closed insured bank which was acquired by the FDIC pursuant to the Federal Deposit Insurance Act. FDIC v. Interbanca-Banca per Finanziamenti a Medio Termine, 405 F. Supp. 1118, 1121 (S.D.N.Y. 1975) (citing 12 U.S.C. §§ 1819 and 1823(e) (1969)). The situation in Interbanca-Banca may be analogized to the one before this court, and supports the public interest argument of the NCUAB.

¹⁰Section 1787(a)(1)(A) provides that a court may not "restrain or affect the exercise of powers or functions of a liquidating agent." 12 U.S.C. § 1787(a)(1)(A).

¹¹Section 1787(j) describes the powers of the board relating to the liquidation of an insured credit union.

The fourth factor, therefore, weighs in favor of the plaintiff.

In addition to the four-factor test discussed above, the court should view the particular circumstances of the case in question. Dresser Indus., Inc., 628 F.2d at 1375. This court is confronted with a civil action filed in November of 1988. Therefore, the case is almost two years old, discovery has not yet been completed and the motion deadline has not yet passed. Discovery matters are presently pending. Up until the time that the matters which constitute the subject of this appeal were before the court, few if any difficulties arose as a result of the concurrently pending criminal action. In resolving this appeal, and in balancing the interests of the parties, I have affirmed the entry of a protective order with regard to the dispute at issue, with one minor modification as described in section II(A)(1) of this memorandum made pursuant to the agreement of the parties.

There are several pending motions in the criminal action. When the matter is ready for trial, the trial might be lengthy. Therefore, at this point it is difficult to estimate how a long a stay in the civil proceedings would remain in effect. Although King's rights in the criminal case must be defended, "this does not mandate a complete disregard for the rights of civil litigants." See General Dynamics Corp. v. Selb Mfg. Co., 481 F.2d 1204, 1213 (8th Cir. 1973).

Under the circumstances involved in both this civil action as well as the pending criminal action, I decline, at this time, to

stay the civil actions involving the Kings and the Franklin Credit Union. I shall, however, reconsider the issue at a later date if it is raised or if it otherwise becomes apparent to the court that the proper circumstances exist which would warrant a stay.

Therefore, I now vacate the temporary stay imposed on January 5, 1990 in this case as well as other related civil cases and deny without prejudice the defendant's motion for a stay of these civil proceedings pending the resolution of the pending criminal action involving the Kings.

IT IS ORDERED:

1. The appeal of the NCUAB (Filing No. 180) is granted in that the Magistrate's order (Filing No. 176) is modified to the extent that Mr. Robert Fenner and Mr. James Stewart may review the transcript of the Kirchner deposition, and Mr. Fenner and Mr. Stewart shall be subject to the same provisions of the protective order regarding nondisclosure as are all persons who will be present at the deposition, that is that they are ordered not to reveal the contents of the deposition to any person not present at the deposition, including but not limited to the United States Attorney for the District of Nebraska; the appeal of the NCUAB is otherwise denied;

2. The appeal of the United States of America (Filing No. 177) is denied;

3. The Magistrate's order (Filing No. 159) is modified in accordance with paragraph (1) of this order and is otherwise affirmed;

4. The temporary stay imposed in this case and in other related civil cases on January 5, 1990 is vacated; and

5. The defendant's motion to stay these civil proceedings pending the resolution of the pending criminal case, CR 89-0-63, is denied without prejudice.

DATED this 15 day of October, 1990.

BY THE COURT:



William G. Cambridge
United States District Judge

UNITED STATES DISTRICT COURT

District of Nebraska

Post Office Box 1076

Omaha, Nebraska 68101

Oct 24 1990

William G. Cambridge
District Judge

October 24, 1990

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Re: United States v. [redacted] CR 89-0-153

Dear Ms [redacted] and Gentlemen:

You are hereby advised of my following tentative findings on the objections which have been made to the Presentence Investigation Report (PSI) which has been prepared in the above-referenced case.

The defendant's objections to paragraphs 51 and 82 of the PSI, all of said objections are set out in the letter of the defendant's attorney, [redacted] to the Court dated October 12, 1990, are sustained, and the portions of the paragraphs so objected to are stricken from the PSI.

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The defendant's objection to a two-level increase in the offense level under U.S.S.G. 3B1.3 is overruled because the Court finds that the defendant abused a position of private trust in a manner that significantly facilitated the commission and concealment of the offense.

The defendant's objection to a two-level increase in the offense level under U.S.S.G. 3A1.1 is overruled because the defendant knew or should have known that the victim of the offense was unusually vulnerable due to mental condition and was particularly susceptible to the criminal conduct.

Oct 24 1990

[redacted]
Mar

Ms. [redacted]

Mr. [redacted]

Mr. [redacted]

October 24, 1990

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The defendant's objection to a two-level increase in the offense level under U.S.S.G. 3C1.1 is overruled because the defendant willfully impeded or obstructed, or attempted to impede or obstruct, the administration of justice during the investigation or prosecution of the instant offense.

The defendant's objection to the determination that the defendant is not entitled to a two-point reduction in the offense level under U.S.S.G. 3E1.1 is overruled because the defendant has not clearly demonstrated a recognition and affirmative acceptance of personal responsibility for her criminal conduct.

If you wish to dispute the aforesaid tentative findings and to be heard with respect to the same, either by way of presenting evidence or argument, you will be required to do so at the sentencing hearing. If you intend to present evidence, I would appreciate your advising me in advance of the hearing of your intent to do so and of the time you will take. If the sentencing must be continued in order to allow you sufficient time to prepare for the hearing, please advise me of the same and file a motion for the continuance.

Very truly yours,

/s/ W. G. Cambridge

William G. Cambridge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
Plaintiff,) CR. 89-0-63
vs.) MEMORANDUM IN OPPOSITION
LAWRENCE E. KING, JR. and) TO CLOSURE
ALICE PLOCHE KING,)
Defendants.)

By motion dated December 18, 1990, filing #458, Defendant Lawrence E. King, Jr., has requested that trial of his case be severed from that of his co-defendant. In addition, in paragraph three of the motion he has asked that any hearing on it be closed to the public. No adequate grounds for such closure were stated. No adequate grounds are present, and the request to close the hearing should be denied.

The Eighth Circuit has ruled on the standard that must be met -- and by whom -- to justify closure of criminal proceedings. U.S. v. Powers, 622 F.2d 317 (8th Cir. 1980). In affirming the trial court's refusal to close a trial, the court held that to justify such closure, the defendant must establish each of the following:

- 1) substantial probability of irreparable harm to his right to a fair trial,
- 2) substantial probability that alternatives are inadequate, and
- 3) substantial probability that closure will be effective.

Absent a standard specifically applicable to pre-trial proceedings, the trial court should look to this case for guidance.

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Thus, the burden on the defendant seeking to close a criminal proceeding is substantial and not easily met. Furthermore, the harm to be prevented by closure is quite narrow. It is not the risk of publicity as such that may justify closure of a hearing; it is only the risk of prejudicial publicity that can warrant such an extreme measure. Prejudicial publicity has been discussed before with regard to Defendant's motion for change of venue. Prejudicial publicity includes publication of a defendant's prior criminal record, Marshall v. United States, 360 U.S. 310 (1959), especially if that record includes conviction for offenses similar to the one with which he is currently charged. This is prejudicial since it raises the risk that potential jurors may read of this and, consciously or subconsciously, rely upon such convictions in forming a decision as to guilt or innocence. Prejudicial publicity includes broadcast of a defendant's videotaped confession, a confession that was at least arguably inadmissible if not clearly so, Rideau v. Louisiana, 373 U.S. 723 (1963). Prejudicial publicity includes publication of other types of evidence which is directly related to the offense with which the defendant is charged and yet is or may be inadmissible at trial, Irvin v. Dowd, 366 U.S. 717 (1961).

No such risk is present here. The hearing sought to be closed is only to determine whether Defendant King's trial should be severed from that of his co-defendant. No showing of harm has been made. None of the factors noted in Powers has even been addressed by the defendant. If defense counsel wish to inquire into confidential and privileged matters, then that particular

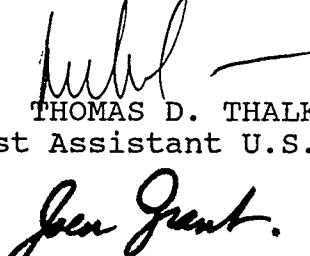
testimony could be taken in camera if the harm which would result rises to the Constitutional standard set forth above. Closure of the hearing as a whole is unnecessary to achieve such a limited result.

WHEREFORE the government respectfully requests this court deny defendant's request to close the hearing set for December 27, 1990.

Respectfully submitted,

RONALD D. LAHNERS
United States Attorney

By: THOMAS D. THALKEN
First Assistant U.S. Attorney


By: THOMAS D. THALKEN

Assistant U.S. Attorney


By: JOEN GRANT

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing was served on the following by hand delivery, this 26th day of December, 1990.

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Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
Plaintiff,) CR. 89-0-63
vs.) GOVERNMENT'S REPONSE TO
LAWRENCE E. KING, Jr. and) DEFENDANT'S THIRD BRADY
ALICE PLOCHE KING) MOTION (Filing #460)
Defendants.)

By motion dated December 14, 1990, Defendant Lawrence E. King has asked that the government be required to review all statements of all persons who have been interviewed in connection with this case, and evaluate those statements in connection with eight specific psychiatric designations. Attached to his motion were copies of various psychiatric definitions for use in this exercise. This request is characterized as one for "Brady material." This characterization oversteps the bounds of that doctrine, and the request should be denied. *(X)* *ML*

The Brady Doctrine

Brady v. Maryland, 373 U.S. 83 (1963) held that suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment. Thus, failure on the part of the prosecutor to disclose exculpatory evidence, where the evidence is material, may require reversal of a conviction and remand for a new trial. The standard for materiality is that "there is a reasonable probability that, had the evidence been disclosed to the defense, the result

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of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." U.S. v. Bagley, 473 U.S. 667, 682 (1985). A prosecutor thus has a responsibility to disclose information which has a reasonable probability of affecting the outcome of the trial in a way favorable to the accused. This is the extent of the Brady doctrine.

The court has already declared, filing #76, that Brady material then known to the government is to be produced by a date which is to be sixty days before trial. Thus, defendant will receive impeachment material and any known exculpatory material on January 3, 1991.

The additional material requested is not Brady material. As noted previously in the government's response to defendant's second Brady motion (filing #248), disclosure of evidence which might tend to negate defendant's guilt is not required. Thus, where defendant relied on self-defense to excuse his conduct, and the victim's criminal history, which showed a violent character, was not provided by the prosecution, this did not constitute reversible error. United States v. Agurs, 427 U.S. 97 (1976). The Eighth Circuit has explained that the omitted evidence must be material to the defense, and where it is merely cumulative, a failure to disclose a polygraph of the key prosecution witness in a rape trial will not cause reversal of the resulting convictions. Ogden v. Wolff, 522 F. 2d 816 (8th Cir. 1975).

The result of non-disclosure depends on the importance of the evidence to the defense and to the trial. Information which casts doubt on the fundamental fairness of a trial, such as the existence of perjured testimony, must be disclosed. Failure to do so mandates reversal of a conviction "if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." Agurs, 427 U.S. 97, 103 (1976). Second, information specifically requested by the defendant must be disclosed if it might affect the outcome of the trial. Agurs at 104. This is represented by defendant King's first Brady request. Certain specific statements were requested, and those which contained potentially exculpatory information were provided. Order of the court, filing #76. Finally, the prosecutor is duty-bound to produce without request any information of sufficient significance that its omission denies the defendant a fair trial. Agurs, 427 U.S. at 108.

The fact that evidence may be useful, or may somehow influence or assist in defense strategy, does not trigger a Brady obligation. The information requested here is outside the scope of disclosure. Unlike the polygraph results in Ogden v. Wolff, which may have been unknown to the defense, here all witnesses interviewed by the government are equally available to the defendant. He knows who he has had contact with in connection with the failed credit union, and who would be familiar with his conduct over the term of the indictment. Further, he will be provided a list of expected witnesses by February 11, 1991, in accord with the court's order,

filings #317. If he believes there are persons who can provide the kind of testimony he is seeking, he is free to make inquiry of them. In addition, as each person testifies, he is free to ask whatever cross-examination he deems appropriate within the bounds of the rules of evidence. At that time, he will also have available copies of statements the witness has made to the government, if any. Should this be inadequate to allow him to prepare his defense, additional time to review the statements of specific witnesses may be granted.

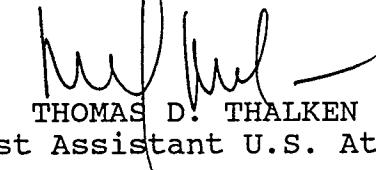
It is not clear that the information requested would even be admissible, however, much less material and exculpatory. The issue of intent is specifically one for the jury to determine. Thus, in United States v. Esch, 832 F. 2d 531, 534 (10th Cir. 1988), the court approved rejection of expert testimony regarding the defendant's mental state to show she could not have had the requisite intent. Rule 704(b), Fed. R. Evid., affirms that no expert witness may state an opinion regarding whether the defendant did or did not have the requisite mental state. Yet defendant King would have the government seek lay witnesses who can provide statements in accord with complex psychological diagnoses in order to negate his intent to commit these crimes. Whether he had the requisite mental capacity to commit the crimes charged is a question for the jury. It should be left for their capable hands.

The government respectfully submits that this court's prior Order regarding production of Brady material is adequate, and requires no supplementation. The defendant's third Brady motion should be denied without hearing.

Respectfully submitted,

RONALD D. LAHNERS
United States Attorney

By: THOMAS D. THALKEN
First Assistant U.S. Attorney


By: JOEN GRANT
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing was served on the following by hand delivery, this 26th day of December, 1990.

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John Grand

Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
Plaintiff,) CR. 89-0-63
vs.) GOVERNMENT'S RESPONSE TO
LAWRENCE E. KING, Jr. and) MOTIONS TO CHANGE VENUE
ALICE PLOCHE KING) (Filings #387 and #397)
Defendants.)

By motions dated October 3, 1990, and October 5, 1990, filings
437 and #397, the defendants Lawrence E. King and Alice P. King
have renewed their motions for a change of venue in this case,
based on prejudicial pre-trial publicity. An evidentiary hearing
has been requested. The request for change of venue is premature,
and the evidentiary hearing unnecessary. Both motions should be
denied.

The Court has already ruled on this issue. Similar motions were filed on behalf of each defendant in February, 1990, filings #175 and #178. A full evidentiary hearing was held commencing April 10, 1990. The Magistrate issued Findings and Recommendations, filing #316, on May 23, 1990, recommending that the motions for change of venue be denied without prejudice. On June 13, 1990, filing #329, the Court adopted those recommendations and ruled that "the defendants' motions for change of venue (Filing Nos. 175 and 178) are denied without prejudice to reassertion during or after voir dire."

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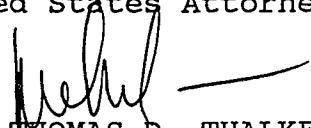
Trial of this case is currently set for March 4, 1991. The Eighth Circuit has repeatedly held that it is preferable to await voir dire before ruling on motions for change of venue. United States v. Bliss, 735 F. 2d 294, 297 (8th Cir. 1984); United States v. Poludniak, 657 F. 2d 948, 955 (8th Cir. 1981). This is so because mere existence of publicity, even publicity which may reflect adversely on the defendant, is not by itself sufficient to require a change of venue. "The accused is not entitled to an ignorant jury, just a fair one." Simmons v. Lockhart, 814 F. 2d 504, 510 (8th Cir. 1987). Even the existence of some prejudice among prospective jurors does not mean that an impartial jury cannot be impaneled. United States v. Mercer, 853 F. 2d 630, 633 (8th Cir. 1988). What is required is that the jury empaneled be impartial, and that can best be determined at voir dire.

A pre-trial change of venue is called for only when the publicity surrounding a case is so extensive and so inflammatory raises a presumption that a court would not be able to answer of prospective jurors if they said they could be impartial. Beck v. Washington, 369 U.S. 541, 557 (1961). That is not the case here. Although reporting of this case has continued, the stories have been factual and based upon what is in the public record. Reporting of unrelated allegations has significantly declined since issuance of the reports of the federal and Douglas County grand juries in September. Mere reporting of court proceedings is not inflammatory, and does not warrant a change of venue.

The government is confident that, as in other prominent cases tried in the District of Nebraska, voir dire of the prospective jurors will dispell defendants' fears of jury bias, and reveal an adequate pool of impartial jurors such that the case may be tried in Omaha. These motions should be denied.

Respectfully submitted,

RONALD D. LAHNERS
United States Attorney


By: THOMAS D. THALKEN
First Assistant U.S. Attorney

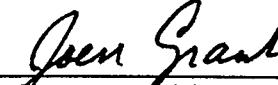

By: JOEN GRANT
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

The undersigned, do hereby certify that a true and correct copy of the foregoing was served on the following by hand delivery, this 26th day of December, 1990.

Steven E. Achelpohl
Marilyn N. Abbott
Attorneys at Law
100 Historic Library Plaza
1823 Harney St.
Omaha, NE 68102

Jerold V. Fennell
Attorney at Law
Suite 225, Regency Ct.
120 Regency Parkway Dr.
Omaha, NE 68114



Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
Plaintiff,) CR. 89-0-63
vs.) GOVERNMENT'S RESPONSE TO
LAWRENCE E. KING, Jr. and) MOTION TO SUPPRESS
ALICE PLOCHE KING) STATEMENTS (Filing #246)
Defendants.)

The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." To ensure that this freedom is preserved, the Supreme Court has had a rule excluding from evidence statements made by an accused which are not voluntary. Determining which statements are voluntarily given and which are not has consumed much case law. Since 1966, for custodial interrogation, the starting point in determining voluntariness is whether or not a person has been advised of his or her Constitutional rights, the so-called Miranda warnings. Miranda v. Arizona, 384 U.S. 436 (1966). Even in non-custodial settings, any statements, to be admissible, must be voluntary.

Further, the Sixth Amendment provides that every accused person shall "have the Assistance of Counsel for his defence." This right attaches upon the initiation of formal adversary proceedings against a person. Such proceedings include filing of a formal charge or complaint, a preliminary hearing, filing of an indictment or information, or arraignment. Michigan v. Jackson, 107A-51

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U. S. ___, 89 L. Ed. 2d 631, 106 S.Ct. 104, (1986); Kirby v. Illinois, 406 U.S. 682, 689 (1972). No right to counsel exists prior to such formal adversary proceedings.

The Defendant Lawrence E. King, Jr., by filing #246, has asked that four statements he gave, under various circumstances to various individuals, be excluded from evidence in this case because, he says, those statements were obtained in violation of these fundamental Constitutional rights. Thus, Defendant King apparently contends that these statements were given after initiation of formal adversarial proceedings against him so that his Sixth Amendment rights were implicated, and without a knowing and voluntary waiver of his Fifth Amendment right to remain silent. These propositions are untenable.

he First Statement -- November 18, 1988

On November 18, 1988, Defendant King was deposed in connection with a civil case filed against him by the National Credit Union Administration [hereafter, NCUA]. That deposition was taken at the offices of his then-attorneys, Ericson and Sederstrom. Four of those attorneys were present for the deposition -- William E. Morrow, Samuel Clark, Mark Peterson, and J. Russell Derr. The deposition was taken by counsel for NCUA, C. L. Robinson. Mr. Robinson was accompanied by one employee of NCUA, Gary Vopat. There were no law enforcement personnel there. There were no federal attorneys there. There was simply an NCUA employee with his attorney arrayed against Mr. King and four of his attorneys, at the office of Mr. King's attorneys.

Further, at that time there was no complaint filed against Mr. King. There was no indictment or information pending against him. There was no formal adversarial criminal matter pending in connection with the failed Franklin Community Federal Credit Union [hereafter, FCFCU] at all. Thus, there was no Constitutional right to have counsel present under the Sixth Amendment. Since the deposition was taken at the offices of Mr. King's attorneys, there can hardly be a claim that he was then in custody. It is difficult to conceive how such a situation amounts to an "involuntary, unknowing and unintelligent" statement.

Mr. King responded to questions with clarity and comprehension. He sought and received advice of counsel during this part of the deposition. He comprehended the nature of the proceedings

of his responses. The Constitution does not prevent a person from giving statements which may be found to be incriminating; it only protects against compelling such statements. If they are freely given, they are admissible. No grounds for exclusion exist, and the statement of November 18, 1988, should not be suppressed.

Second Statement -- November 23, 1988

The second statement given by Mr. King in connection with the failure of Franklin was at least given to law enforcement officers. Two IRS agents met with Mr. King in a conference room at the IRS District Office. An FBI agent was also present. Also present were three of Mr. King's attorneys. Thus, once again no Sixth Amendment right to counsel had yet developed.

Further, no complaint had been filed; no indictment or information had been filed. No other form of formal criminal proceeding had been commenced. Thus, there was no Constitutional right to the appointment of counsel, yet counsel were present so there can be no claim that any Sixth Amendment right was violated.

There can be no contention that this was a custodial setting, or that Mr. King's presence or his responses were compelled. The meeting came about when Mr. King's then-attorney, William E. Morrow, was provided a target letter. This letter identified Mr. King as the subject of a grand jury investigation and invited him to meet with law enforcement officials if he so chose. He so

construction of the word "involuntary" that
cludes a statement given by a person in the presence of his
attorneys by his own choice to do so. Thus, this second statement
is not subject to suppression and is fully admissible.

The Third Statement -- March 31, 1989

As with the first two statements, no formal proceedings had yet been instituted, so no Sixth Amendment right to counsel attached. The indictment was returned May 16, 1989, and all other formal proceedings were subsequent. This third statement of Mr. King was given in response to a request by the NCUA's local counsel, C. L. Robinson, to continue the deposition initiated in November. The deposition took place in Mr. Robinson's office. Mr. King was not accompanied by counsel, so Mr. Robinson took care to ensure that Mr. King understood his right to remain silent. The following interchange took place.

Q: Mr. King, are you represented by counsel today?

A: No, I'm not.

Q: Mr. Morrow who represented you previously has withdrawn as your counsel?

A: That's my understanding.

Q: Have you been attempting to find other counsel?

A: To some degree.

Q: Okay. I assume that prior to your previous deposition, Mr. Morrow advised you generally of your rights in a deposition?

A: Right.

Q: And I assume he advised you if there are questions that you think your answer to might tend to incriminate you, then you have the right to refuse to answer those questions?

A: Right.

Deposition of Lawerence E. King taken in connection with NCUA
1-143. Thus, Mr. King was fully advised of his right to refuse to answer by his attorneys prior to the first statement, and at the time of the third statement he was still aware of that right. This is the only constitutional issue presented, and his presence at this voluntary deposition, his willingness to answer questions, his comprehension of the nature of the proceedings and his intelligent and understanding responses negate any suggestion that his statement is subject to suppression.

The Fourth Statement -- April 25, 1989

On April 25, 1989, Mr. King once again appeared at the IRS District Office for an interview by IRS agents and an FBI agent.

This time he was not accompanied by an attorney. However, the following exchange took place.

Q: Mr. King, do you understand that you're appearing here voluntarily?

A: Yes.

Q: And do we have your permission to tape record this interview?

A: Yes.

Q: You understand that you're not under arrest?

A: Yes.

Q: You understand that you may leave at any time?

A: Yes.

Q: You understand also that you can refuse to answer questions posed to you?

A: Yes.

... rding of interview, pp. 1-2. Again, this was not a custodial situation. No formal criminal proceedings had been instituted. Mr. King appeared at the IRS offices by his own volition. The only initiative of law enforcement was to request the interview. No threats were made, no compulsion of any kind was imposed. These statements, as with all three prior statements, are fully admissible at trial.

Conclusion

As the court noted in considering the motion to suppress statements submitted by defendant King's co-defendant, Mrs. King (filing #179), a person is not entitled to formal advisement of Mirand rights simply because that person is the focus of an investigation. It is only in custodial settings that that

requirement is imposed. Beckwith v. United States, 425 U.S. 341, 344-348 (1976). Mr. King was not under arrest, nor was his freedom restricted in any significant way. At each interview, he arrived and departed by his own means. At two of the interviews, he was accompanied by counsel of his own choosing. No case has been found where statements given by the subject of an investigation during the course of the investigation while accompanied by his attorneys were suppressed. No case has been found where non-custodial statements freely given by an intelligent, articulate adult have been suppressed. In Mincey v. Arizona, 437 U.S. 385, 401 (1978), the Supreme Court held that the voluntariness of a confession should be evaluated upon the "totality of the circumstances" involved in each case. This Circuit has identified several factors to be applied in making that evaluation, in United States v. Rorex, 727 F. 2d 753, 755-756 (*th Cir. 1984). Applying those factors to the four statements of these statements demonstrates that there are no grounds to suppress any of the four statements. They were freely given by a man well aware of his situation and with advice of counsel of his own choosing. They are admissible at trial, and the motion to suppress, filing #246, should be denied.

Respectfully submitted,

RONALD D. LAHNERS
United States Attorney

THOMAS D. THALKEN
First Assistant U.S. Attorney

John Grant
JOEN GRANT
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing was served on the following by hand delivery, this 26th day of December, 1990.

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John Grant

Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA,) CASE NO. CR89-0-63

Plaintiff,)

vs.)

LAWRENCE E. KING, JR. and)
ALICE PLOCHE KING,)

Defendants.)

AFFIDAVIT OF LAWRENCE
E. KING, JR.

STATE OF NEBRASKA)
ss.
COUNTY OF DOUGLAS)

Lawrence E. King, Jr., being first duly sworn upon oath states
as follows:

1. He is one of the Defendants in this action and this
Affidavit is offered in response to this Court's Order of September
28, 1990.

2. In response to question 1(a), for the offices of FCFCU
and CSO located at 1723 N. 33rd Street, Affiant states that the
area highlighted in pink on the attached map constituted his
personal office and secretarial area. Specifically, Affiant's
secretary was Sandy Rhode Prucha and her assistant, Gwen Pierce.
Further, Affiant had three administrative assistants and an
attorney who also performed work of a personal nature for him.
These administrative assistants were Kurt King, Terrance Powell,
and Dan Kane. Further, an attorney named Shanita Spencer also
performed personal work for Affiant. The administrative
assistants, and Ms. Spencer held files within file cabinets and
desks located in or near their offices and work spaces which
related to the Affiant personally and his personal businesses. The
location of their offices are highlighted on the map in yellow.
Affiant had the expectation that both his secretary, her assistant,

his administrative assistants and attorney, Shanita Spencer, would not disclose Affiant's personal files or those of his personal businesses to any other person except as specifically necessary to carry out the direction of Affiant.

3. In response to question 1(b) as it relates to the offices of FCFCU and CSO located at 1723 N. 33rd Street, the following information is supplied by Affiant:

a. As to Affiant's personal office, Sandy Rhode Prucha and Gwen Pierce were allowed to enter the office for purposes of filing and maintaining the files of Affiant. Additionally, Affiant's secretary and her assistant were expected by Affiant to prohibit access into documents filed within their secretarial area except as expressly permitted by Affiant. The door leading from the main entry into the FCFCU directly into the secretarial area of Sandy Rhode and Gwen Pierce was kept locked. Business or social invitees of Affiant were met by Affiant or his secretaries and escorted to Affiant's office through the door located on the north side of the "Kurt King and Terrance Powell area". Employees of CSO and FCFCU were not permitted to enter Affiant's office for the files in his office or the secretarial area unless under the specific direction or control of Affiant or his secretaries during normal business hours. However, Earl Thomas Harvey, Jr. had access to keys to Affiant's personal office and all other areas of the credit union.

b. As to the areas highlighted in yellow in which Affiant's administrative assistants and attorney Shanita Spencer worked, files of a personal nature relating to the Affiant were controlled from disclosure, at his direction, to persons other than his secretaries and administrative assistants and attorneys. Affiant also had an expectation that as among his secretaries, administrative assistants, and attorney Shanita Spencer, files would not be exchanged except as necessary to carry out Affiant's specific directions and purposes.

c. As to the areas marked in blue on the attached map, denoted as personal file storage, access to the file cabinets noted on the first page of the map in blue was restricted to his secretaries and administrative assistants. These file cabinets on the first page of the map were file storage for excess file material of a personal nature and Affiant expected that access to these files would be controlled by Affiant's secretaries and administrative assistants. As to the area marked in blue on the second page of the map relating to "personal records and items stored", this area was controlled by Affiant and he had the only key to the area except as noted above with respect to the access by Earl Thomas Harvey, Jr. to all keys for the credit union.

4. In response to question 1(c), for the offices of FCFCU and CSO located at 1723 N. 33rd Street, the general public was allowed to enter without escort of a FCFCU or CSO employee the area shaded in red on the attached map. Employees of FCFCU or CSO were allowed into the area shaded in black on the map only if their job duties specifically related to bookkeeping functions within the area shaded in black. Other FCFCU and CSO employees were generally not allowed into this area unless escorted specifically by a bookkeeping employee. Further, the general public was not allowed into the area shaded in black. As to Affiant's personal office, the general public was not allowed. Business or social invitees were only allowed into the office with the permission of Affiant. As to all other areas of the credit union, business or social invitees of the specific employee who held control of an area such as their own office were allowed, but only with specific permission or control of that employee except as noted above regarding the area shaded in black referencing the bookkeeping and teller areas. Neither the general public nor business invitees or guests of any employee of FCFCU or CSO had access to any personal files of Affiant wherever stored, without Affiant's permission.

5. As to question 1(a), (b) and (c) regarding the office of

FCFCU and CSO located at 2429 M Street, Affiant did not have any personal office space or secretarial area or administrative assistants at this location. The general public as business or social invitees of the employees at this location were allowed to enter those employees' offices with the permission and under the control of the employee. There was a teller area at this address in which only bookkeeping or teller employees would be allowed and those employees would not have been allowed to bring the general public into such area.

6. In response to questions 1(a), (b) and (c) for the CSO offices located at 2505 N. 24th St., Suite 219, an employee at this office, Judith Carroll, was an administrative assistant to Affiant and handled a number of personal matters for Affiant. The files of Judith Carroll relating to her activities on personal matters of the Affiant were expected by the Affiant to not be disclosed to other persons except at the direction of Affiant and in connection with carrying out those duties. Affiant's expectation of privacy with respect to his personal files under the control of Judith Carroll was the same as described above with respect to his other administrative assistants.

7. In response to questions 2 and 3 of the Court's Order of September 28, 1990, Affiant has examined boxes 54 through 87 which have been represented to the Affiant and his attorneys as items seized by the FBI and IRS under the November 4, 1988 search warrants. Affiant has attempted to the best of his recollection and within the time constraints imposed to identify within those boxes items seized which were personal in nature or reflected substantial personal input of the Defendant. The Defendant has also attempted to identify, to the best of his recollection, the location of those items seized on November 4, 1988. Affiant's review of the "search warrant" items is attached to this Affidavit.

a. Regarding questions 2 and 3 of the Court's Order of September 28, 1990, with respect to the NCUA's Conservatorship

Order and take-over of the FCFCU, Affiant has reviewed boxes 1 through 6B in the Federal Depository which were represented to Affiant and counsel for Affiant as documents seized by NCUA under the Conservatorship Order. Further, Affiant has generally reviewed numerous boxes of records housed at the NCUA West Omaha Depository which have also been represented to have been taken from the offices of FCFCU and CSO by the NCUA under the conservatorship order. As to these boxes Affiant attempted to focus on items which were personal in nature or reflected substantial personal input and has also attempted to the best of his recollection to identify where those documents were located as of November 4, 1988. This information is contained in an attachment to this Affidavit.

b. Based upon Affiant's review of boxes 1 thru 6B and 54 through 87 in the Federal Depository along with his general review of the boxes located at the NCUA's West Omaha Depository, it appears that the NCUA, pursuant to the Conservatorship Order and take-over, seized all records, documents and personal property contained in the office of FCFCU/CSO of the Affiant, other than those taken by the FBI pursuant to the search warrant. Affiant has not personally inspected the former offices of FCFCU and CSO as to whether the NCUA has left documents or possessions in those buildings and offices. However, notes of NCUA officials and FBI agents appear to indicate that ongoing review and selection of files and documents continued for many months after the credit union closed on November 4, 1988.

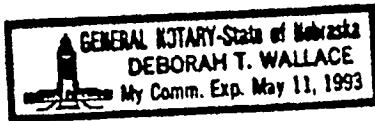
c. As to the grand jury subpoena documents obtained by the prosecutor under the November 14, 1988 grand jury subpoena, Affiant has no personal knowledge. However, based upon the ability of the United States Attorney, Thomas Thalken to control access to both the documents in the federal depository which were taken under the Conservatorship Order and also those documents of CSO and FCFCU stored at the NCUA's West Omaha depository, it would appear to Affiant that all the documents contained within the offices of

FCFCU and CSO have been made available to the U. S. Attorney's office and the F.B.I. for review and use.

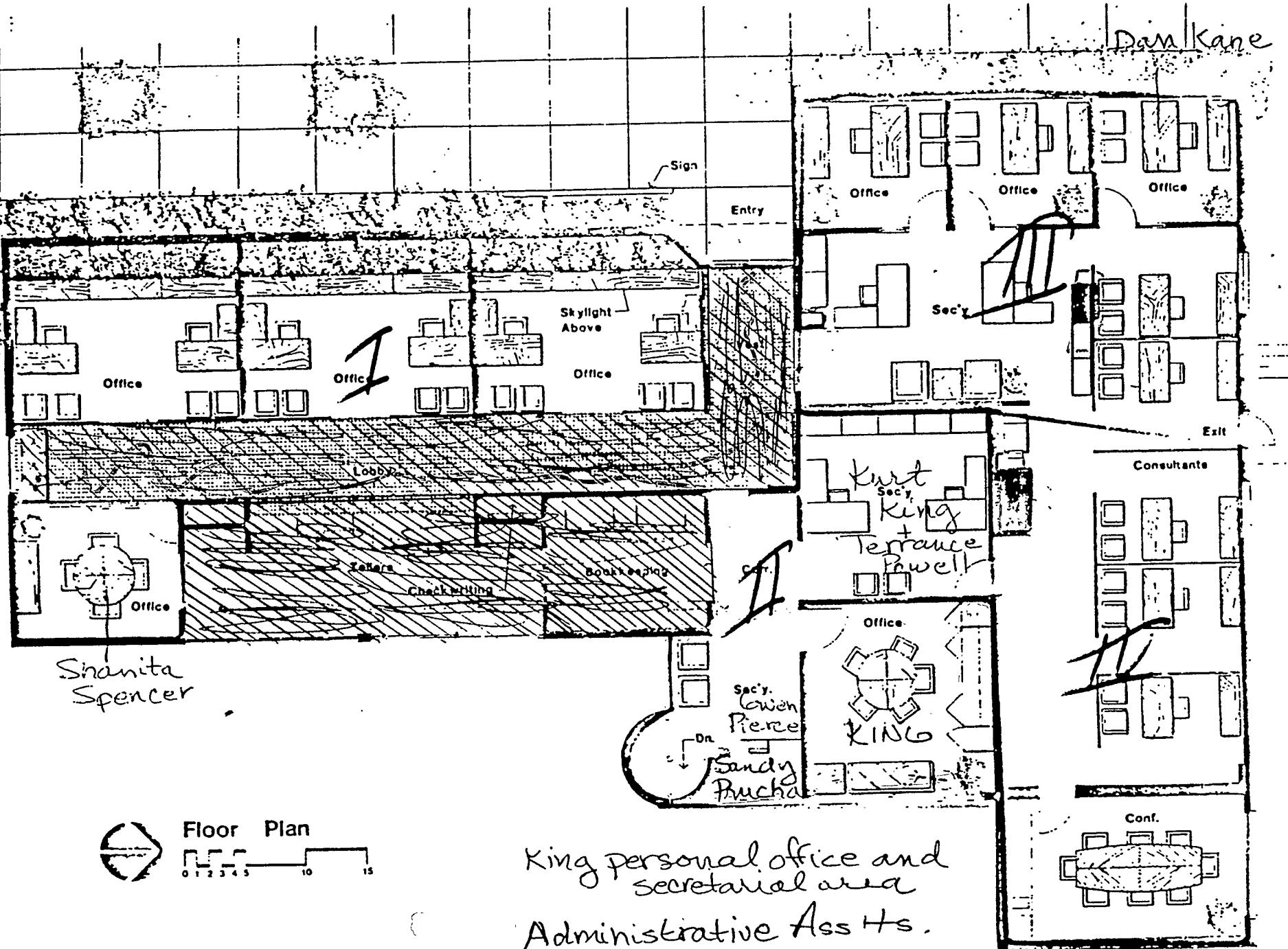
FURTHER AFFIANT SAYETH NOT.

Lawrence E. King Jr.
LAWRENCE E. KING, JR.

SUBSCRIBED AND SWORN to before me this 21st day of December, 1990.

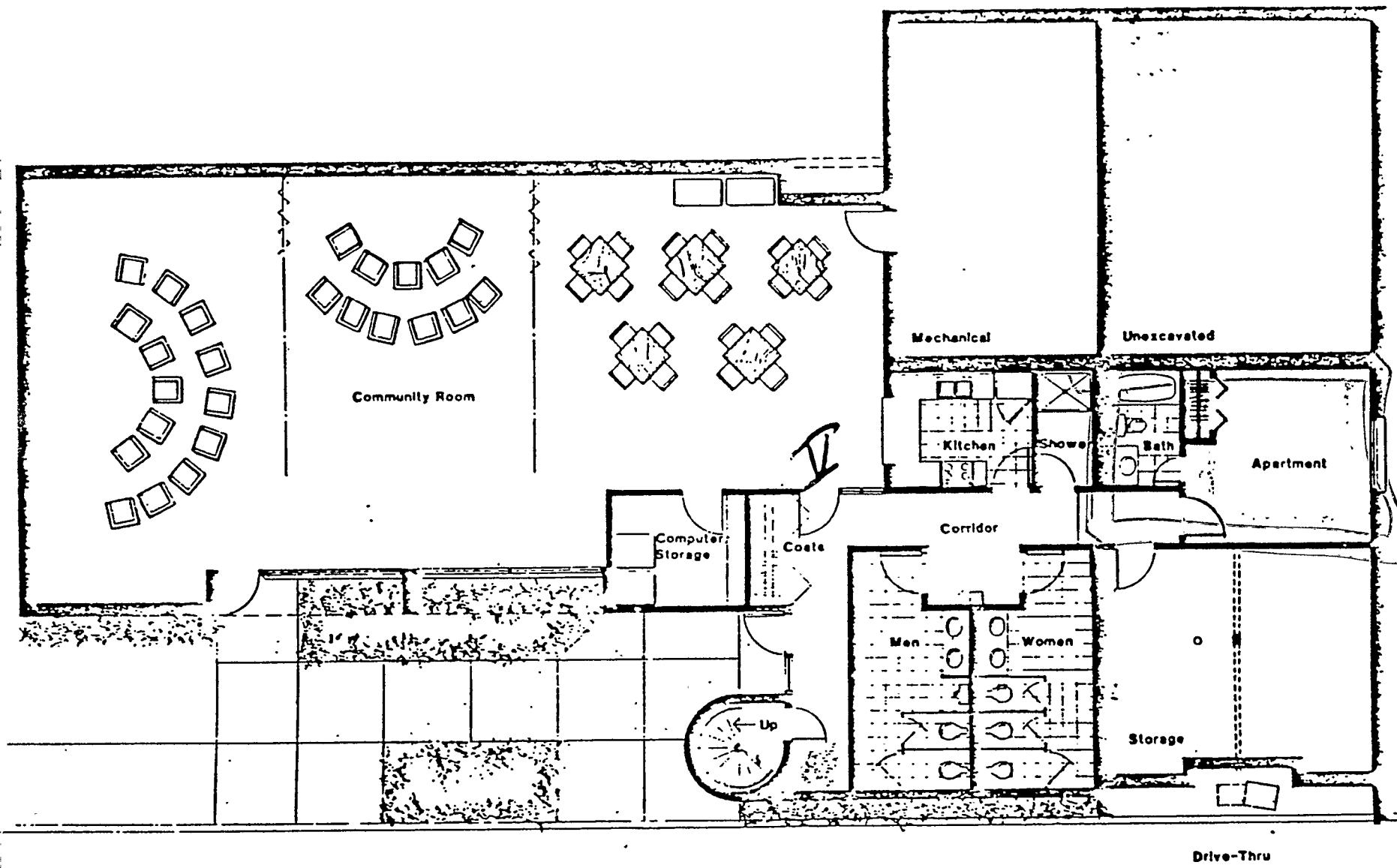


Deborah T. Wallace
Notary Public

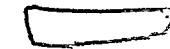


King personal office and
secretarial area
Administrative Ass'ts.

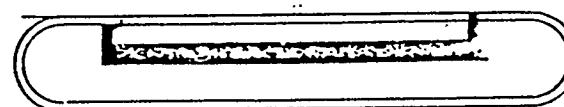
Personal file storage



Ground Floor Plan



Personal Records
& Items Stored



Boxes at Depository at Federal Building

With respect to the boxes at the Federal Building Depository, which contain material represented by the Government to have been seized under the Search Warrants, the following review was conducted:

Lawrence E. King, Jr. (LEK)
Franklin Community Federal Credit Union (FCFCU)
Consumer Services Organization (CSO)

BOX 54:

Box 54 contains computer runs, which are not the personal property of King, nor were they prepared by him.

BOX 55:

Box 55 contains a file labeled Prudential File - Insurance statements re: The King Company. These are the personal property of King.

BOX 56:

These documents apparently came principally from Sandra Rhode's (King's personal secretary) office.

The box also contains what appear to be Bill Hansen files - investment records. The following are the personal property of King:

1. Lease - 2441 California St., N.W., Washington DC
3A
3B
3C
2. Maintenance contract on Home - 13232 N. River Road.
Work Contract on River Road Residence.
Work Contract agreements on King Co.
Nebo, Inc. Agreement - Security services; King
I-Go Van Storage - Warehouse receipt - 2
Hotentot Maintenance Agreement
Proposal to King from Hicks Construction re Chateau
Lounge
Wolf Coven'l Nazr Purchase Order
Furniture Lease between King and Cari Rental
Permanex proposal
Maintenance Agreement from Sears
Advertising Contract - King Co. - re: Clarkson Hospital
Fashion Production
Proposal - North Star Studios re: Room Davidson

List of Potential republican party endorsers - celebrities - in envelope with Kurt King's name on the outside.

"City of Omaha"
Assessor stubs re: 86 Jeep and 84 Chrysler

FEDERAL BUILDING DEPOSITORY

Real estate tax statements - North River Road
Check dated January 29, 1987 (King Co. real estate taxes
- Sam J. Howell.)
Check Stubs and Real Estate tax statements (King
Co. - Koutze Place Property)
Auto License renewal dated March 1986 re: "85 Merc".

Memo from Bill Wilson to Dan Kane (probably from Terrence
Powell's Desk)

Completed travel schedules - all documents in file.

Friends list of King - frequently used names.

Memo to Kurt King to William Jennings and all attachments
(secretary's, office in north desk) - probably Kurt
King's desk.

BOX 57:

Most of the documents contained in this box apparently came
from behind Kurt King's desk from files maintained by Sandee Rhode
or Gwen Pierce (Sandee Rhode's assistant). The following are the
personal property of King:

From File FCU - 1987:
Otis & Assoc. - bills for appraisals
King Co. receipt from U.S. Post Office.

From Paid in Cash file:
Omaha Club Bill - 6/30/88
(LEK)
King Co. - Bill from Gettmen & Co.
Handwritten receipt from Chuck Brizendine for Showcase, dated
9/21/88.
Bobbitt's invoices - 9/9/88; 8/22/88
Piccolo's invoice - 8/31/88
Invoice Bickels Meat Center, 9/6/88
Nebraska Plumbing Invoice - 9/13/88
All Food invoices for King Co.
Omaha Press Club Invoice - 9/16/88
Request for checks - 8/19/ and 9/20
Summary of Corp. Card Account (Am. Express) - LEK
Bill for King Co. - 7/14/88
I-GO receipt for storage; 9/8/88
Gettman & Co. - King Co. - 4/27/88
Utility Bill - 2441 California NW - Washington, DC - 6/9 -

FEDERAL BUILDING DEPOSITORY

7/12/88

Invoice - Solid State Electronics - 8/25/88
AT&T invoice - 9/2/88 - King Co.
Packet of food receipts re: King Co.
Wade Management - King Co. 9/6/88
Orkin - King Co. (2)
Invoice - Durham Transfer - Showcase Lounge
Food receipts - King Co.
Mastercard Receipt - 6/29/88
Omaha Press Club Receipt
Davidson's - bill
Culligan receipt
Armstrong Cleaners/receipt
Stoysich Receipt
Trash removal receipts
U.S. West - King Catering
AT&T - King Co. bills (several)
Excel Merchandise - King Co.
Lustre Cleaners - Washington - King Co.
Food Invoice - Grait Food, Rockville, MD.
Kauffman - King Catering
Janousek Florist
King Co. - Petty Cash receipts.
Receipt - Preferred Steaks
AT&T Leased equipment bill
Blue Ribbon Prestige Receipt - LEK
Misc. Receipts - King Co.
University Club Receipt
Citibank Mastercard - 6/17/88
Time Sheet - Don Parks
Auto Repair Receipt
J's - Jewels - 6/3/88
Terminex - Showcase - Invoice
Bickels Meat Center - Invoices
Petits Pastry Receipts
Memo re: party of Nancy Bounds for Bob Kerrey.
Invoices - Washington Park Gourmet
Durham Transfer - Showcase
Mastercard Bill - 6/27/88 (King Co.)

Expandable large brown envelope 1988 invoice file:

Generally, all invoices showing King Co., Cafe Carnivale, or the Showcase Lounge, Masa, Inc., AKASAKA, Lawrence King, and his immediate family, and all invoices showing delivery of goods to Washington, DC, and to the entities and persons described above are the personal property of King. This expandable envelope is organized alphabetically, and the personal invoices, to the extent possible, are described as follows:

FEDERAL BUILDING DEPOSITORY

- a. None
- b. All documents
- c. All documents
- d. None
- e. invoices identified to Mr. King, his immediate family and his personal businesses
- f. All documents
- g. All invoices of the Greenery in the name of Larry King or Cafe Carnivale.
- h. All of the Horn invoices with respect to the Showcase
- i. All invoices in the name of King Company, the Hockenberg invoices (King Co), all artists contracts in connection with performances at the Showcase, the Helmsley Palace invoice dated 2/10/88, the invoices of David Hunt (repairs for King Co); bills of Joyce Mennig with respect to the Penthouse for Mr. King personally, invoice of Hortrdard Coaches, Inc. dated 6/2/88 and the Helmsley Palace invoice and all attachments from 6/4/88 to 6/7/88.
- j. 2/18/88 Invoice of Jay's Manufacturing, invoice dated 1/3/88 in name of Lawrence M. King, Jr. dated 1/3/88, invoice dated 2/1/88 from Jacobson Fish Co., I-Go Van and Storage invoice dated May 2, 1988 - LK c/o of Franklin Credit Union., I-Go Van and Storage invoices dated 2/22/88, 4/21/88, 2/19/88, Ibsen Costume Gallery invoice dated 2/12/88, Bill of Dr. Wm. Johnson, marked paid, 2/21/88; all Janousek Florist bills; Douglas D. Jasa and Assoc. bill for the Brownell Talbot Fund raiser for LEK and Check of October 4, 1988 to Douglas D. Jasa and Assoc., with attached statement dated 9/21/88 from Douglas D. Jasa and Assoc., Inc.; bill of Immanuel Medical Center, dated 4/24/88; I-Go van & Storage invoices dated 7/27/88, 9/28/88; 2 Invoices from Jackson National Life Insurance Company with respect to Alice G. King, dated 6/16/88 and 7/13/88.
- k. Statement from Kiwanis Club of Omaha, Inc. dated 2/29/88; invoices from Kauffman Pastry Shop; statement of KMG Enterprises with reference to Cafe Carnivale from 1/2/88 to 1/31/88; invoices from K-B Foods, Inc., 8/4/88; Invoice and request for check with regard to Klopp Printing Co.; invoice of Klopp Printing company dated 5/31/88 and request for

FEDERAL BUILDING DEPOSITORY

check attached; Security deposit agreement of Knudson Investment Co., Inc. dated 1/14/87 with respect to the Orpheum Tower apartment; invoice of Kaleidoscope dated 1/27/88 with attached handwritten note; various KamAir invoices (Mr. King cannot recall without reference to a travel schedule which of the KamAir invoices were personal and which were political, and which were business related [related to Franklin or CSO]); invoice of Kama, Inc. 2/29/88 and other invoices attached thereto; all J.D. Ice Service invoice and all Omaha Ice Co. invoices, and all Kama, Inc. invoices, in reference to Cafe Carnivale and the Showcase; all Kiwanis Club invoices, Check dated 10/4/88 to the Kiwanis Club of Omaha; a memo regarding "Plan of Action", showing payments with reference to the Showcase and Janice King; Letter of 9/28/88 from Lou Paciocco to Shanita Spencer, with reference to La Cage Aux Folles, and attached check; invoice of Kam Contracting dated 8/12/88, with reference to King Co.

1. Statement of K. V. Lyda, dated 5/24/88; original invoice to L & M Services from Pegler dated 7/18/88; monthly statement of Landons dated 4/30/88, in the name of LEK, Jr.; invoice of Landon Livery marked paid 7/29/88; statement of LK's tree service, for tree trimming dated paid 10/7/88; invoice from LTD Commodities, Inc. dated 9/27/88 and attached check; all invoices from Landscape Projects, Inc., and one attached check; invoice dated 3/31/88 relating to advertising from unnamed vendor in name of King Co. Catering; LK's tree service invoice marked paid 9/15/88; all Landon's invoices; all invoices from Larimere's Inc.; handwritten Lippett Bottle Shop invoice marked paid 2/16/88 on yellow sticky; invoice from Little Professor Book Center dated April 7, 1988 with reference to King Co. and the Brownell Talbott fund raiser; all Lovgren Advertising, Inc. invoices; all Leopard Productions, Inc. invoices; all invoices from the Lincoln University Club;
- m. All Mastercard bills; all invoices, checks and documents, which bear the name of Lawrence E. King, Jr.; all Menck and McGovern Glass Co. invoices bearing the name Lawrence E. King, Mr. King residence, Cafe Carnivale, Showcase, and King Co.;

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all McClellan Audio Service invoices; all invoices of Marie Midland Automotive Financial Corp.; all invoices of Metz Baking Co.; all invoices of the Maids of Capitol Hill; all invoices of Max I. Walker; all invoices of Michelle Collections, Inc.; all Master Lease Corporation invoices relating to communications at 2021 Wirt Street only; invoice of Mark Turner Flowers, Ltd. dated 2/15/88; invoice of Midwest Video, dated 1/18/88; all invoices from Martins, of Washington, DC.; invoice dated 6/20/88 to Mr. Larry King with reference to flower arrangement for Bemis Fund raiser; invoice dated 6/20/88 showing address of 2021 Wirt Street; invoices of Massachusetts Life with reference to Lawrence E. and Alice G. King; all invoices of the Maids of Omaha, that do not relate to the Franklin Credit Union, North or South.

- n. all invoices from Nash Auto Wax; all invoices of Nebraska Plumbing showing job locations other than Franklin Credit Union; all invoices of Northwestern Bell; request for check, dated 4/29/90 with reference to Nancy Bound's International; memo from Kurt King to Mr. King, dated 1/8/88, with reference to party room at Orpheum Tower, 15th floor; handwritten invoice of Hassan Majid, marked paid 2/5/88; invoice of New York Fur Shop, hand written and stapled to blank envelope, marked paid 2/24/88; invoice of Nebraska Wine and Liqueurs, dated 5/3/88; manufacturing invoice, dated 7/31/88; invoice of Sign Works, dated 4/14/88; invoice of the Nation Wide yellow pages, marked paid 4/6/88;
- o. Invoice of Schneider's Liqueur Store (Misfiled) in the amount of \$21.06; invoice of Nationwide Yellow Pages marked paid 4/6/88; Request for check for the Omaha World Herald, dated 9/29 and attached check and invoice; Invoice from Omaha Jewelry Company dated 8/25/88; all Orkin Pest Control invoices, from Landover, MD; All OPPD electric service bills in the name of King, Allen's Showcase, the Showcase Lounge; all invoices of Old Market Limousine Service; invoice of Omaha Antique and Job Plating Co. dated 2/2/88; invoice statements of the Omaha World Herald dated 6/30/88 and attached check dated 8/10/88; all invoices from Admiral Limousine Service dated; all checks attached to any invoices of Old Market Limousines Service; all other

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invoices for limousine; all invoices of the Omaha Press Club and attached checks; all statements of the Omaha Club.

- p. Terminix Pest Control invoices with respect to 13232 North River Road and King's Catering marked paid 5/6/88; any similar invoices of Terminix Pest Control for King Company, Cafe Carnivale or Akasaka; all invoices of Pegler Sysco Food Services Co., and any attached checks; all invoices of Petitt's Pastry; all invoices of Panache Catering and attached checks; all invoices from Piccolo's Florists; all time sheets of Donald M. Parks; invoice of Pittman Animal Hospital marked paid 3/24/88; all invoices from Potomac Electric Power Company; all invoices from Pacemaker Pools of Omaha, Inc.; invoice of Opera Omaha dated 1/28/88 to King Company; all invoices of P.J. Morgan Co.
- r. All invoices of Russell of Georgetown, Inc.; the request for checks dated 8/11/88 to secure double rooms at Red Lion for Showcase artists; request for checks dated 7/26/88; invoice of Mayor Bernie Simon for fund raiser on behalf of Ray Simon, dated paid 3/4/88; all invoices of Regniers, Inc.; all invoices and checks to Ridgewells Caterers, Inc. of Washington, DC; statement of the Ritz Carlton dated 5/3/88 and all attachments; invoice of music for disklavier marked paid 5/10/88; statement of the Ribster to King Co. dated 9/3/88; invoice of Reliable Locksmiths of Washington, DC dated 8/5/88; invoice Rigel Corp. dated paid 7/6/88.
- s. The invoice from Standard Printing Company dated 4/22/88, with reference to product shipped to Citizens for America attention Abigail Trolman; invoices of Standard Printing Company dated 7/20/88 with reference to products shipped to Carmen and Hugel, with attached request for check and copy of check; political fund raiser with respect to Senator Labedz, dated paid 3/22/88; invoice of John Scofield Savage, dated 6/13/88 with attached invoice from Johnson Hardware Co.; invoice of John Scofield Savage, AIA dated 7/14/88; invoice of Security Equipment, Inc., alarm specialist, dated 12/30/87; invoices of Security Equipment, Inc., dated 3/31/88 and 4/7/88; invoice of Security Equipment, Inc. dated 4/7/88; invoice of John

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Scofield Savage dated 5/20/88; invoice of John Scofield savage dated 4/11/88; all invoices of Security Equipment, Inc.; invoice of John Scofield Savage dated 4/11/88 and all attachments; all invoices of Statewide Limousine, Inc.; invoice of Standard Printing Company dated 6/15/88 and all attachments; invoice of Servicemaster dated paid 10/13/88; note to Sandee dated 8/26/88 to pay Sam Super Service \$75.08; invoice of Sidney's Orchestra's Inc., dated 5/23/88; invoice of Servicemaster of Arlington dated 9/12/88; invoice of Speedy Inc. dated 9/14/87; invoice of Spic and Span Linen Supply, Inc. dated 6/30/88; invoice of the Surfside Club marked for a total bill of \$25.00; Statement of Surfside Club marked paid 4/11/88; Statement of the Surfside Club dated 5/21/88 marked paid 5/26/88; all invoices of Sweet Sensations, various invoices of insurance companies dated 8/10/88 and all attachments; all statements of Skyharbor in the name of Alice King; invoice from Sam's Super Service marked paid 7/19/88; Sears charge statements in the name of King showing payment of \$305.14 on 8/12/88; invoice of Stoyisch House of Sausage dated 4/28/88; envelope of the Salvation Army showing \$100.00; invoice of electronics invoice dated 3/28/88, telephone note to Sandee dated 1/8 from Kathy, showing amount paid to Sam's Super Service on 1/8/88 of \$573.90; all invoices of Simon Meats; invoice of Servicemaster dated 9/20/88; invoice of Servicemaster of Arlington, dated 9/20/88; request for check to S & P Images for invitations to La Cage, dated 10/6/88 and attached invoices; Request for check dated 8/10/88 to Marlena Shaw; Request for check to S & P Images, dated 8/30/88 for King birthday party, with all attached invoices and checks; Request for check to S & P Images dated 10/1/88 with reference to three month calendars for Showcase.

t. All service invoices of Terminix Termite and Pest Control; all statements of Travato's dated 9/4/88; all statements of Topp's; all statements of Terrell's flowers and attached checks; statement of Target marked paid 4/22/88; invoice of Technical Services, Inc. dated 1/18/88; copy of receipt marked paid 3/24/88 with reference to Twin Tower in the amount of \$1,535.00, handwritten statement of Twin Tower marked paid 1/20/88 in amount of \$3,070;

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envelope marked Charles delivered to: Twin Towers, check stub 10/24/88 with reference to Twin Towers in the amount of \$2,175.00.

- u. Invoice of United Van Lines dated 3/18/88; invoice of United Security, Inc. dated 12/4/87 with attachment; invoice of United Rental dated 3/29/88; invoice of USA Today dated 2/20/90 and marked paid 3/1/88; invoice of Upstairs Dinner Theater dated 10/13/88; Visa statement dated 9/7/88 marked paid 10/4/88; letter of 11/11/88 from Negleatha Johnson to Mr. King; all invoices of US West Communications with reference to service at the following telephone numbers: 451-1617, 393-2825, 451-6016, 451-3062, and 344-8544; all invoices from US West Cellular.
- w. Invoice of Yaffe Printing Co. dated 12/23/87 and attachments; all statements of the Wardrobe for Men; all statements for Waste Management of Nebraska; invoice marked paid 9/8/88 from Wm A. Wilson for Fairfax, Virginia, and attachments; Billing stubs of weekly pickup service (garbage and trash hauling); invoice of Williams Printers and Publishers dated 9/30/88; request for checks to Walt Reeder Productions in the amount of \$7,500 dated 10/18/88, and attachments; Gift subscription invoices of Mrs. Alice King marked paid 4/1/88; handwritten sheet identifying "Women's Addition" in the amount of \$1,608 marked paid 3/24/88; Statements of Amway products in the name of Alice King; invoice of the Washington Post, for the billing period 8/1/88 through 9/25/88; bill from Pisces Lounge dated 2/29; gift subscription invoices in the name of Alice King from Fairchild Publications dated 2/17/88; invoices of Amway Products No. 827904,903, and 827881; all invoices of Washington Park Gourmet.

MISCELLANEOUS:

Request for checks to Sandy for R.D. Waller dated 4/29 and all attachments.
Request for checks to Sandy for R.D. Waller dated 6/17; Request for checks to Sandy dated 5/16/88, for Mid America Council of Boy Scouts;
Invoice from Yonkers, Inc. for 60 centerpieces dated 5/10;

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Memorandum to Sandee from Roy Nelson dated 3/23/88 with reference to "checks".
Memo to Sandee from Pete with reference to equipment for Ahmad Jamal, marked paid 5/20/88.
Time sheet of Don Parks marked paid 6/23/88.
All requests for checks from Judy Carroll to Sandee, and all attachments to said requests for said checks.
Four memos to Sandee from Pete with reference to instrument rentals.
Memo to Sandee from Judy Carroll marked paid 4/19/88;
Handwritten note to Mr. King dated 4/24/88 from Russells of Georgetown, re: bill of \$554.58;
Timesheet of Donald M. Parks for a period from 7/1/88 to 7/30/88;
Visa receipt of Dan Kane payable to Olivia House in the amount of \$344.58;
Phone memo to Mr. King showing YWCA \$100 donation;
Telephone slip to Sandee dated 7/8/88 showing payment dated 7/8/88;
Handwritten note on small yellow sheet with reference to Ridgewell Caterer's, Inc. marked paid 3/18/88;
Yellow handwritten page with reference to Leopard's Productions, Emmy Gifford Theater, and Peony Park, marked paid 5/9/88;
Fund raiser for "Hal's campaign debt" with yellow sticky attached;
Small note on card in name of John Helms showing amount of \$445.00 paid 8/3/88;
Telephone slip to Sandee from John Helms showing \$350 paid 4/5/88;
Yellow sticky on name of FCFCU showing Pete Hall, paid 4/22/88 in the amount of \$300.00
Telephone slip for Sandy from Joyce Reeves, showing paid 5/10/88;
Memo to Mr. King from Judy Carroll re: prices on ads in the Omaha Star and Omaha World Herald.
Phone memo to Sandy from Joe Rossito, showing paid 2/26/88;
Small yellow handwritten note to Gwen showing payments on 8/26/88;
Note showing Shawn Dorcy, paid 6/8/88 with blue FCFCU Sticky showing name of Pete Hall, paid 4/18/88.
Yellow note showing name R.D. Waller, Showcase in the amount of \$100 paid 4/20/88.
Telephone slip to Sandee for payment to Joyce Mennig in the amount of \$284.92 dated 4/22/88.
Note to Sandee reference Mennig, showing paid 4/8/88.
Blue sticky of FCFCU showing B'Leone Hair Studio paid

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4/11/88.

Yellow note Joe Rossito with attached telephone slip dated 4/20/88 showing paid 4/20/88.

Small white sheet showing bill for parties from Mrs. Essex.

Telephone slip to Sandee from John Helms dated May 2 quoting bill of \$925.00.

Small yellow paper note with Yolanda Pazimino, with reference to payment of 3/18/88 for \$310.

Square yellow note with reference to 16.5 hours times 5 for Eric Jones shown paid 8/12/88.

Small yellow sticky in amount of \$169.50 for B'Leone shown paid 6/16/88.

Small yellow sticky showing paid 4/27/88 -

Note to Sandee from Jenice, with reference to Ebony Fashion Fair in amount of \$200 shown paid 5/4/88.

Note to Sandee dated 9/14/88 from Barbara Moore for payment for Sylvia Wilson.

BOX 58

The following documents are personal to King:

All documents contained in the file of Judy Carroll denominated "Contracts Local Groups", contained within a transparent binder with the notation "Room 1, Contracts and related financial papers for "Showcase Lounge"".

BOX 59

Box 59 was kept under the control of LEK's secretary, Sandra Rhode and is comprised of more 1988 invoices, again classified by letter. Those personal to King are as follows:

- a. All invoices from the American Linen Supply Co. and accompanying checks to the American Linen Supply Co.; the orange small sheet identifying the Arirang Club and "Mr. King account" showing a balance of \$1,800 and comprised of \$1544.66 plus gratuity; the invoice of the Knights of Aksarben dated 2/88 in the amount of \$1,500 plus attachments, small white tape from Giant Food dated 7/25/87; all Abraham Heating and Air Conditioning, Inc. invoices and attachments to said invoices relating to all work done at 13232 North River Road, 2021 Wirt, and the Showcase Lounge; all invoices from Germaine Atterbury ("Meals from the Heart"); all bills relating to credit cards of Amoco, all invoices of AAA Rent relating to King Company, Cafe Carnivale and Showcase; all American

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Express account statements, attached checks, billing slips and related documents, relating to accounts held in the name of King; all Armstrong Cleaners and Laundry invoices relating to services for laundry picked up at all locations other than 1723 No. 33rd St.; all Answer Omaha invoices of King Co., Cafe Carnivale and Showcase Lounge; all invoices of Automated Systems, Inc. which refer to "King Co.;" invoices of Acura of Omaha dated 12/21/87, 9/30/87, 2/8/88 with attached blue FCFCU sticky, 1/21/88, 12/14/87, 1/6/88, 12/31/87, 3/25/88, 10/26/87; All Makes Office Equipment invoices dated 3/28/88, 2/9/88 providing for the goods to be shipped to King at 2021 Wirt, and a second invoice dated 2/9/88, showing shipped to King at 2021 Wirt, 2/2/88 providing for shipment to 2021 Wirt St., 5/16/88 providing for shipment to Greg Sapp at 2021 Wirt, 6/14/88 providing for shipment 2021 Wirt st. to Greg Sapp, 6/24/88 invoice for shipment to Greg Sapp at 2021 Wirt St., 6/20/88 for shipment to Greg Sapp at 2021 Wirt St., 7/14/88 for shipment to Greg Sapp at 2021 Wirt St.; all invoices for Ames Florist relating to King Co., "the King house at Wirt", the "King House"; Statement account for music to Cafe Carnivale dated 3/1/88; bill of Piano Service dated in /87; the Azteca dated in 88 with attachments; AT&T invoice dated 10/2/88 marked paid 10/13/88; invoice of Arenz Drapery Barn marked paid 1/88 and attachments; invoice of Ames Florist dated 7/27; unidentifiable statement in the amount of \$1,013.00; invoice plus attachments of Anderson Fire Equipment Co., Inc., dated 3/31/88; request for check to Alpha Kappa Alpha, marked paid 8/3/88; invoice from Atlas Awning and Manufacturing Co. in the amount of \$180 marked paid 4/25/88; Invoice of Alpha Kappa Alpha Sorority marked paid 1/22/88; Memo to Sandy from Keith, marked paid 1988; invoice of the AEI Music dated 4/1/88; invoice of Armstrong Cleaners and Laundry dated 4/4/88; invoice of Ambience, Inc. dated 9/17/87;

- b. all invoices of the Byrne Law Firm relating to Masa Inc., Akasaka, Showcase and the King Co.; invoices of Bell Atlantic, invoice dated 9/3/88; invoice of Bobbitt's Custom Framing of Larry's dated 1/29/88 with green sticky attached;
- c. Invoice of Carmen and Hugel dated 10/4/88, marked paid 10/11/88 and cashed check; invoice of Claudia's marked paid 8/18/88; invoice of Central High School marked

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2/24/88; invoice of Columbia Mirror and Glass dated 6/20/88; invoice of Carl Jarl security systems dated 3/29/88; note of card of Mr. King's Cafe Carnivale marked paid 8/16/88.

- d. Invoice of Doui Dominick fashions dated 8/8/88; all Davidson's invoices contained in the D file in Box 59; check dated 10/11/88 to the order of DanGuard, Inc.; invoice of DanGuard, Inc. dated 9/29/88 with attachments; statements of Douglas O. Desheasor, DDS, showing dental work for LEK and APK, and showing paid on 2/18/88; all Diner's Club invoices, statements and any corresponding checks; all invoices from the District of Columbia Natural Gas; statement of 7/5/88 of the Exchange Club of Omaha; small white card showing Dance Ellington paid \$15,000 - 1/28/88; invoice of Durham Transfer dated 8/15/88 and attachments; all invoices of Dairy Distributors Wholesale; invoice of Daily Word showing paid 3/8/88; invoice of Data Documents dated 2/29/88; all water and sewer bills from the Dept. of Public Works from District of Columbia; invoice of Duncan Aviation showing paid 7/20/88; all invoices of Exchange Club.
- e. Note of Esther Essex for 1/29 luncheon paid 2/24/88; letter of 6/13/88 from J. Russell Derr to LEK, Jr.; all invoices of Excel Merchandise and Novelty Co. identified to King Co.; all bills and correspondence and attachments of the law offices of Erickson and Sederstrom; check of 3/23/88 to the Emmy Gifford Children's Theater and all attachments; Eggers Personnel and Consulting invoice to Cafe Carnivale dated 12/28/87 and all attachments.
- f. two invoices from FBG Service Corp. dated 9/15/88 - Service location of First National Bank Building and the second with respect to King special - 2021 Wirt St., Omaha, Nebraska; invoice of FBG Corp. dated 12/31/87 identified as King special residence security; FBG Invoice dated 12/31/87 with respect to Bemis Art Gallery; FBG Service Corp. invoice dated 12/15/87 with respect to King specials - 13232 North River Road; FBG invoice dated 3/31/88 showing service location 13232 North River Road; attached check dated 7/25/88 to the order of FBG Service Corp. in the amount of \$357.50. FBG Service Corp. dated 1/31/88 with reference to service location of LEK's residence special at Twin Tower; FBG service Corp. invoice dated 1/15/88 with reference to service location at LEK's residence; FBG Invoice dated 4/14/88 showing service location of King Special 13232 No. River Road;

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FBG Invoice dated 4/22/88 showing service location at King's special "Prince's Showcase"; FBG Invoice dated 3/14/88 showing service location of King Special 1733 No. 33rd St.; FBG Invoice dated 2/15/88 showing service location of LEK's residence at 13232 No. River Road; FBG invoice dated 2/4/88 showing King's Catering at 2021 Wirt St.; FBG invoice dated 4/7/88 showing service location at Simon Showcase; FBG Service Corp. dated 6/28/88 showing service location as King's special at 13232 N. River Road; FBG invoice dated 7/29/88 showing service location as King Special at 2021 Wirt; FBG invoice dated 7/29/88 showing service location at King Residence 13232 N. River Road; FBG invoice dated 8/8/88 showing security service at King residence at 13232 N. River Road; FBG Service corp. invoice dated 4/30/88 showing service location King Special Cafe Carnivale; FBG invoice dated 12/14/87 showing King special at 13232 N. River Road; all invoices with attachments of Floral Concepts by Daniel Janosek and Co.; invoices of Farmer Insurance Exchange - invoice for renewal term 10/5/88 thru 4/5/89 and attached check in the amount of \$423.10, invoice for term 10/6/88 thru 4/6/89 showing paid 9/19/88 in amount of \$1,013.30, and accompanying check of 9/19/88 in like amount; invoice for renewal term 11/1/88 - 5/1/89 with respect to 1987 Caviliar showing paid on 10/13/88; invoice for renewal term 6/30/88 through 12/30/88 with reference to '86 Cherokee shown as paid 6/16/88; optional payment plan reminder notice shown as paid 2/9/88; important expiration notice dated 4/12/88 shown paid 4/18/88; invoice for 1987 Mercedes with renewal term of 4/6/88 to 10/6/88 shown as paid 4/11/88, invoice with reference to '86 sport wagon for renewal term 11/6/88 through 5/6/89; all invoices of the French Cafe, Inc.; all invoices of Farrell Gas, Inc.; all invoices of Food Services of America and corresponding checks; remittance advice of Federal Express shown as paid 8/17/88; invoice of Furey Heating and Air Conditioning dated 2/26/88; invoice of FF Waters, Caterers dated 5/18/88; portion of bill of Federal Express to Dan Kane showing shipment 5/6/88 bill dated 5/23/88 from Dan Kane to Gerald Carmen; Federal Express bill dated 4/11/88 showing as paid 4/19/88; Federal Express bill dated 8/15/88 showing as paid 9/21/88; portion of Federal Express bill dated 8/29/88 which effected delivery from LEK, Jr. to Ms. Shyayla Simpson, Ashland; Federal Express bill dated 8/22/88 Invoices of Gatcho Electric as follows: 59337, 59338, monthly statement of Eric Gatcho Electric shown as paid 4/9/88, invoice #57418, 57503, 57504, 57419, 57567,

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57565, 57862, 57657, and monthly statement shown as paid 6/30/88; monthly statements of all vendors relating to non-FCFCU entities or locations; all invoices of Gettmen & Son, Inc., invoices and statements of D.C. King Co., all invoices of Gentlemen's Choice formal wear;

BOX 60

No documents are contained in Box 60 that are the personal property of Mr. King, or that were within his personal possession or reflect substantial personal imput of him in their making or creation. Specifically, Box 60 are 1099s, Mr. Vawter's audit files relating to 1983 and 1984 and various CD records, which appear to come from the bookkeeping file cabinet to the right of the safe.

BOX 61

The following are the personal property of King:

Routing memo, note on small blue sheet, and letter of 4/28/87 to LEK from Cyble Cowart and letter from Kay Michelle Allison-Davis to Cybil Cowart, with reference to damaged pedestals; Memo to Dwight Dean from Kay Michelle Allison-Davis dated 11/18/88 re: King Co. and attachments; handwritten notes re: house in Washington; handwritten notes re: Davidson's furniture - Wirt St., and Nebraska Furniture; letter from Kay Michelle Allison-Davis to Marks Clare Hopkins, etc. re: invoice payment of Terry Wiese and attachments; bill of sale from LEK, Jr. to Robert F. Morley re: horse; routing memo; check to Arthur McGee; memo and all attachments; invoice of the Helmsley Palace dated 9/23/88; all credit card statements contained in File No. 98B identified as Visa, American Express, Mastercard Account information taken from Area II, Rhode Office; statement of FirstTier Bank dated 9/30/88 with regard to mastercard cardholders including LEK; FirstTier Bank of Omaha statement regarding miscellaneous checks and credit card statements as follows: Check - 10/18/88 - American Express, Check - 10/19/88 - Cafe Carnivale; Summary of account of American Express with closing date 7/12/88 with attached check to American Express travel related services, check - 10/13/88 to Carmen McCrea Productions, Inc. - 95391, 95392, check to American Express - 10/19/88, check - Citicorp Diner's Club - 10/18/88, check - 10/18/88 to American Express, check - 10/19/88 - Walt Reeder Productions, check - 10/18/88 - La Cage Aux Folles - \$5,000, check - 10/18/88 - Upstairs Diner Theater, check - 10/12/88 American Express - \$83,935.34, check - Barbara Simon - 10/11/88, check - Wardrobe for Men - 10/14/88,

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Public Storage Warehouse receipt of I-Go Van - 6/30/88; all documents in "File containing miscellaneous American Express Documents Identified to Area II Rhode Office and as file No. 95B".

BOX 62

No items personal to Mr. King or prepared by him.

BOX 63

The following items are personal property of King:

a. copy of 4/19/87 calendar, identified as No. 60B; two envelopes and contents from Allen's Furniture, one marked No. 48B and the other No. 68B; a list of expenses and bills - Carmen, Carmen and Hugel and other bills from Washington DC, identified as No. 27b; Misc. bills and invoices identified as No. 28b, with exception of invoice from Ederer Florist bearing a postmark of 10/32/88; bill from Horn Security showing a postmark 11/2/88; and an invoice from All Makes Office Equipment bearing postmark 11/3/88; Yellow handwritten sheet identified as No. 36B; yellow paper with handwritten totals of figures, is personal; San Francisco guest list dated 7/21/86; all date books and calendars in box 63 are personal. Remaining material in box 63 is federal credit union material, however, with the exception of a typewriter sample taken from a typewriter outside Sandy Rhode's office, all materials were taken from the office identified as "Sec II office", identified as King's office on the map which is in evidence. Therefore these material would have been filed within Mr. King's office.

BOX 66

Location: These files come from the area marked "sec't II Secr Area - files West Wall". These files apparently come from an area behind what the Defendant King identifies as Kurt King's Desk and would be under the control of the Defendant King.

The following are personal to King:

Second file labeled bills and vouchers: a proposal in name of Showcase from E & J Enterprises dated 9/19/88 with attachments; invoice of Omaha Jewelry Co. dated 7/26/88; invoice of Excel Merchandise and Novelty Co. dated 6/27/88; invoice of Bobbitt's Custom Framing Galleries dated 5/18/87, invoice No. 00933; invoice of

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Newton Mfg. Co. dated 5/14/87 and attachments; invoice from Foreign Legion International Male dated 7/3/86; invoices from Davidsons as personal to LEK dated 10/17/86, 10/24/86, 10/24/86; invoices with Jim Earp Chrysler Plymouth dated 6/25/87; invoice of Davidsons dated 6/29/87 order No. 55276; invoice of Jim Earp Chrysler Plymouth dated 6/8/87, #2260; invoices of Standard Printing, dated 7/2/87 and 7/10/87; invoices of Newton Mfg. Co. dated 6/29/87 and 6/25/87; invoice of Cox Cable, denominated "work order" dated 3/25/88; invoice of Louis Albert and Sons, dated 3/10/88, with all attachments (King Co.); invoice of Plains Gallery dated 3/1/88.

Third file labeled bills and vouchers: work orders of Cox Cable; service applications of Cox Cable identified as #'s 24357 and 18854, dated respectively 8/29/87 and 8/20/87; UPS invoice dated 12/2/86, with attached receipt; invoice of Fiberclean of Washington, Inc. dated 3/16/88; US Postal Service statement of mailing with permit imprints - 4/18/87; receipts of Cari rental Store No. 021779, 021780, 021781, and 021782; receipt of Jim Earp Chrysler Plymouth from LEK dated 6/5/87; delivery receipt of Standard Printing Co. - 11/21/86, reference our job No. 1385 (King Co.); vouchers, receipts, attached checks, proposals, relating to King Co., Lawrence E. King., Jr., the Showcase Lounge, Cafe Carnivale, MASSA, Inc., Akasaka, and Mr. King's personal residences at 13232 No. River Road or 3000 Farnam or 2441 California, Washington, DC.

All documents contained in file labeled "Mercedes '86" are personal property of Mr. King.

File labeled "Contracts" - all contracts, correspondence, receipts, invoices, or writings of any kind relating to services provided to or from King Co., LEK, Jr. personally, King residences 13232 No. River Road, 2441 California St., N.W., Washington, DC, 2011 Wirt, 3000 Farnam, Cafe Carnivale, Showcase Lounge are the personal property of the defendant King.

"Travel Services, Billings and similar descriptions" - all invoices, bills, receipts, and writings of any kind relating to travel services of individuals other than employees of Franklin Community Federal Credit Union or Consumer Services Organization. The employees of FCFCU

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and CSO include the following:

Eric Schuermann; Barbara Moore; Beverly Ladd; Karen Lloyd; Stuart Bullington; Alvin Samuels; Jeff Claybaugh; Dan Kane (Cane); Frank Hagen; Allen Conrad; Linda Lovgren; certain amount of the travel of Sally Fink would be Franklin related; Leon Hightower; Kevin Rowe; Shanita Spencer (some travel); Casey Randall; some travel of Andrew Baron (Baren); some travel of Judy Carroll; majority of Joel Rogers travel; Fred Williams; Martha Johnson; some travel of Jim Hillyard; Lloyd Waterman; some travel of Kent Miller; Greg Brooks; (Mr. King is not sure of Tom Berger); all travel of Tom Vrastik; Mark Patten; Mark Hargleroad; Richard Harris; Jenice Moore; Madeline Harrold; Domminick Marcus; John Barksdale; Scott Ballentine; some travel relating to Martha Haynes and Scott Lawson; Kirby Rockwell; Karl Frierson; and Andy Kresha. Frank Clark; Noel Selzer; Carl Jennings

All documents contained in the file "American Express" are personal property of Mr. King.

Larry King - travel records

BOX 67

Location: These documents apparently came from the office of Shanita Spencer, identified as the "Southeast office". These files were under Mr. King's control. Specifically the files are as follows:

Items contained under 78B of the Search Warrant which are personal: Handwritten notes and agreement on pink paper relate to LaCage Aux Folles, and are personal to Mr. King.

Letter from Lou Paciocco to Shanita Spencer dated 9/28/88 with attached check relating to La Cage Aux Folles fund raiser - personal in nature.

Drafts of contracts files: drafts of the agreements contained herein relate to an agreement with an employee of King Company, Omar Tinsley, and also a contract for music at Showcase Lounge - both are personal in nature.

Agreement between LEK and Shanita Spencer regarding personal loan

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to Shanita Spencer; this agreement was personal in nature.

Western Union Mail-A-Gram regarding the La Cage Aux Folles fund raiser, personal in nature as noted above.

Items contained under 79B of the Search Warrant:
All documents relate to contracts of Showcase Lounge and checks relating to Showcase Lounge matters and are personal in nature.

Ahmad Jamal file (no search warrant no.) document relates to personal loan made by Mr. King to Ahmad Jamal and is personal in nature.

Carl Jennings (no search warrant no.) documents relate to a personal loan by LEK to Carl Jennings and are personal in nature.

CSO audit file - the correspondence authored by LEK was prepared by him and thus is comprised of substantial input of Mr. King.

Bill Wilson file - Documents in this file regarding Bill Wilson are in part personal, to the extent that Mr. Wilson performed Public Relations services for Mr. King in connection with King Co., his personal businesses and also in connection with political functions such as the New Orleans event at the Republican National Convention. Another letter deals with Ahmad Jamal personal loan, personal to Mr. King as noted above; additionally a memorandum in this file from LEK to Jim Hilyard is personal in nature and was authored at the direction of Mr. King, but not personally by him.

Washington Lease - documents in this file relate to Mr. King's residence to Washington DC and are personal in nature.

Items contained in clear plastic folder with yellow note paper labeled on front of file "Top of Desk":
Contained within this file are personal documents of LEK relating to Frank Lewin and the Doug Williams Foundation which was a charitable organization, which Mr. King served on its Board.

Manilla envelope to Ms. Shanita Spencer staff attorney Showcase Lounge - all the documents in this envelope specifically relate to the Showcase Lounge, and are personal business of Mr. King.

Directory of socially responsible investments: this document involved a personal request by the organization to ask for Mr. King's involvement.

Mustard color folder entitled "Doug Williams Foundation": This was a charitable organization LEK was involved in, and the documents

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Robert Morley Correspondence File - None personal to Mr. King

Customer Cards of Bob Morley, not the personal property of Mr. King.

Letter dated 10/28/88 from Jenice Harrison to Sister Helen M. Spangler, describing the services of FCFCU and CSO. It was sent in connection with retaining their deposit in the FCFCU. Mr. King may have had some input, however he has no specific recollection.

Letter dated 7/26/84 identified "Letters - Morley" which goes to Sister Kathleen Cumings in Huntington, Indiana and was apparently sent out over Larry King's signature. Mr. King has no specific recollection of this letter.

BOX 69:

Location: Section I Southwest Office FCFCU CD's and other Customer deposit information.

Section I North Office memo to staff from King in re CD competition; Mr. King had substantial participation in making this document.

Memo dated 10/26/87 from Mr. King to staff with reference to a contest for the staff until the end of November, resulting in a two round-trip tickets to anywhere in the United States. Mr. King had substantial input into the preparation and creation of this document.

Quarterly report file a memo was prepared by L. King dated 3/25/86 re deposit reports. Defendant King had personal substantial participation in the creation and making of that document.

Quarterly report file memo to a number of persons from Larry King dated 11/1/88 re: Norwest Bank. Mr. King had substantial personal participation in the preparation of that memo.

Several memos from Shanita Spencer, one dated 3/25/88 and other dated 3/25/88 re: breach of confidentiality; Mr. King had input into these memos in that he requested Shanita Spencer to send the memos advising of possible

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breach of confidentiality.

BOX 70 Location: Section III Secretarial area

Location: Filing cabinet in reception room.

Packet of materials identified as #105A reflecting several managers monthly reports and memoranda from Mr. King which he personally had substantial participation in the creation and making.

Blue binder identified as #102A was under Mr. King's designated control in a secure area also maintained by Sandee Rhode.

Black binder identified as #101A was taken from a designated control area within Section III and was maintained by Mr. King and Sandee Rhode.

Blue binder marked investment policy contained in Box 70, but was nonetheless filed in Shanita Spencer's office according to Mr. King.

Blue binder marked loan policies which likewise came from Shanita Spencer's office.

Minutes of special Board of Directors Meeting held on 10/30/84 and 10/12/84 labeled as #109A which was within the designated control area maintained by Sandee Rhode and Mr. King.

Letter dated 6/28/88 to Shanita Spencer from Hank Vosbene was contained in Shanita Spencer's office was a personal letter of Mr. King's and related to expenses of the Republican convention.

BOX 71 Location: Sections III and IV, on map in evidence.

File #152 A located in Section III middle office on the west wall, Barbara Moore's office: Travel schedule beginning March 16, 1988 and ending March 22, 1988 is personal to LEK or substantially created by him.

#127A - Letter dated 5/6/88 and attached check and other documents from Enron Northern Natural Gas with regard to a table of ten at the National Conference of Christians and Jews meeting is personal property of Mr. King.

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#163B - All documents, including seven statements from the Red Lion Inn and receipt and requests for Checks found in Area II outside Rhode's office are personal property of Mr. King.

#165B - All documents identified as bill and copy from the Maids of Capitol Hill for \$1,002.60, are personal property of Mr. King.

#154B - All documents identified as check #95684 dated November 3, 1988 are personal property of Mr. King.

#169A - All documents in file found in Barbara Moore's office, file marked Charles Drew Fund Drive are personal property of Mr. King.

#155B - All documents in file identified as bill from FBG Service Corp. Invoice #21221, and attachments, are personal property of Mr. King.

#157B - All documents identified as check No. 95652 dated 10/31/88 payable to the Maids of Omaha and attachments, are personal property of Mr. King.

#158B - Several documents including invoice and attached check from Native Game Co., dated 10/28/88, invoice of Am-Ex, Intern'l, Inc. and attached check and insurance renewal premium notice on 1988 LeBaron shown as paid 11/1/88 and attached check; invoice of Dan Guard, Inc. dated 10/21/88 and attachments; all are personal property of Mr. King.

#164B - Borsheim's invoice dated 9/25/88 and attachments are personal property of Mr. King.

#166B - Invoice of KamAir, Inc. dated 10/31/88 is Mr. King's personal property.

#125A - Memo from LEK to Staff dated 6/14/88; memo dated 2/2/87 from Jenice Harrison to LEK, Memo to all staff from Judy Carroll dated 4/8/88, Memo to a number of people from LEK dated 5/4/88 re: Showcase Lounge - upcoming shows, 2nd page of an undated memo from L. King, Jr. are personal property of Mr. King.

#140A - Mr. King had substantial input into a memo dated 3/18/87 re: cleaning desks.

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BOX 72

Invoices 1987: All documents are personal.

Dodge Van: All documents are personal.

Travel Schedule: All documents are personal.

Bill Wilson: All documents are personal.

Blaine Kern: All documents are personal.

2nd file Blaine Kern: All documents are personal.

Lady Anna Charters: All documents are personal.

Apollo, Bock, & Co.: All documents are personal.

Doug Jasa: All documents are personal.

Olivier House Hotel: All documents are personal.

Prudential Insurance: All documents are personal.

State Farm Insurance: All documents are personal.

Farmers Insurance: All documents are personal except those relating to the 1987 Acura, the 1979 Mercedes and the 1987 Cavalier.

Jeep Cherokee '86: All documents are personal.

Jeep Cherokee '86 (Brown): All documents are personal.

Mercedes '87 Coupe - Alice: All documents are personal.

Mercedes '88 LK: All documents are personal.

Car Insurance: All documents are personal except those relating to the Acura, BMW, Cavalier, Renault, and Tojan (Honda Civic).

Panache Catering: All documents are personal.

Invoices 1986: All documents are personal.

Invoices 1988: All documents are personal.

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London Livery: All documents are personal.

Miscellaneous Expenses: All documents are personal.

Lovgren Advertising: All documents are personal.

Hotard Coaches: All documents are personal.

Balloon Sensations: All documents are personal.

Letter dated 7/29/88 with attachments from Jerry Embree from the Nathan Berring Agency, Inc.

Nathan Berring Agency, Inc.: all documents are personal,

Niver Electronics: All documents are personal.

Janousek Florist: All documents are personal.

A substantial portion of the records located in the file identified as Bill Wilson (Carmen, Carmen and Hugel).

All documents in unmarked batch of documents beginning with memo from Dan Kane to Staff and guest dated 8/8/88 with regard to New Orleans trip are personal.

Executive Jet Aviation: All documents are personal.

BOX 73 No Personal documents in this box.

BOX 74 Clear Plastic Envelope: Memo from Manager, LEK, to Staff re: deposit drive contest dated 1/18/84; authored by Mr. King and he had substantial input.

BOX 75 All checks, vouchers, and daily teller reports which relate to invoices for services or products delivered to or rendered for Mr. King, and all of his personal businesses and his immediate family, are personal property of Mr. King.

BOX 76 All checks, vouchers, and daily teller reports which relate to invoices for services or products delivered to or rendered for Mr. King, and all of his personal businesses and his immediate family, are personal property of Mr. King.

BOX 77 All checks, vouchers, and daily teller reports which relate to invoices for services or products delivered to

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or rendered for Mr. King, and all of his personal businesses and his immediate family, are personal property of Mr. King.

BOX 78 All checks, vouchers, and daily teller reports which relate to invoices for services or products delivered to or rendered for Mr. King, and all of his personal businesses and his immediate family, are personal property of Mr. King.

BOX 79 All checks, vouchers, and daily teller reports which relate to invoices for services or products delivered to or rendered for Mr. King, and all of his personal businesses and his immediate family, are personal property of Mr. King.

BOX 80 All checks, vouchers, and daily teller reports which relate to invoices for services or products delivered to or rendered for Mr. King, and all of his personal businesses and his immediate family, are personal property of Mr. King.

BOX 81 All checks, vouchers, and daily teller reports which relate to invoices for services or products delivered to or rendered for Mr. King, and all of his personal businesses and his immediate family, are Mr. King's personal property.

BOX 82 All checks, vouchers, and daily teller reports which relate to invoices for services or products delivered to or rendered for Mr. King, and all of his personal businesses and his immediate family, are Mr. King's personal property.

BOX 83 All checks, vouchers, and daily teller reports which relate to invoices for services or products delivered to or rendered for Mr. King, and all of his personal businesses and his immediate family, are Mr. King's personal property.

BOX 84 All checks, vouchers, and daily teller reports which relate to invoices for services or products delivered to or rendered for Mr. King, and all of his personal businesses and his immediate family, are Mr. King's personal property.

BOX 85 Investment records of FCFCU with no personal input by
BOX 86 Mr. King.

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BOX 87 Teller reports, daily and monthly, and money order coupons, none of which are personal property of Mr. King nor documents which he had substantial input insofar as their creation or making.

Additionally, to the extent found in Boxes 54 through 87, invoices and other documents relating to Mr. King, his immediate family, and his businesses, would be his personal property.

BOXES 1 THRU 6B
OF ITEMS SEIZED BY THE NCUA AND
HOUSED IN THE FEDERAL RECORDS DEPOSITORY

BOX 2

Location: The materials in this box were contained within Larry King's office in the credenza located on the West Wall.

Personnel Committee:

A number of memos were drafted by Mr. King contained in this file and represent substantial input.

Personnel Committee:

A number of memos were drafted by Mr. King contained in this file and represent substantial input.

Travel Materials - Larry King:

File contained personal records of Larry King regarding both airline and hotel bills for travel

Phone Plus - King Co.:

This file contained personal material regarding phone for King Co.

Planned Parenthood:

This is all personal material of Mr. King - he served on the Board of Directors of Planned Parenthood.

Presbytery #5:

Personal material relating to service on the National Presbytery Board.

Staff Structure:

Mr. King had substantial input into the drafting of the staff structure chart and description of duties.

Presbyterian Metro. Ministry - Special Needs Committee:

Personal materials of Mr. King which had been sent to him due to other Presbyterian committees he served on.

Finance Section Meeting Presbyterian:

Personal records relating to Larry King's service on the budget and finance section of the general counsel of the Presbyterian Church.

Professional Remodelers:

These are all personal documents relating to the remodeling of house for King Co.; specifically there are a number of letters authored by Mr. King and showing substantial input in terms of directions and concerns of Mr. King about the progress of the remodeling.

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Leontyne Price:

Personal materials relating to a fund raiser for Frontier International of which LEK was Chairman.

Prudential Insurance 1988:

These are personal documents relating to insurance for both Cafe Carnivale, King Co. and LEK's residence.

Smith Remodeling:

Some of the records in this file relate to personal matters involving remodeling of the Wirt Street property of King Co. and Mr. King's personal residence.

Reports:

Travel reports which were dictated by LEK following various trips and represent substantial personal imput.

Republican National Committee:

Personal information of LEK regarding political activity.

John Savage and Findley:

Involves personal remodeling of LEK personal residence.

Sculpture:

Personal records regarding sculpture of LEK - a bust was completed based upon some of the documents in the file.

Manilla Envelope address to Joseph C. Bryne from the Presbystery of the Missouri Valley:

Materials contained in this envelope are all personal relating to LEK service on various Prebstry committees.

F.L.B. Security:

File contains a number of memos from LEK to Security guards and these represent substantial input of Mr. King.

Showcase Lounge:

Contains personal records and memos authored by LEK to employees of Showcase and from Showcase employees to LEK all relating to his personal business of Showcase Lounge.

Showcase Lounge 1988:

Same type of file as listed above.

Showcase Printers - Copy Cat:

Same contents as Showcase Lounge file and Showcase Lounge 1988

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file.

RSVP:

Personal materials of Mr. King relating to service on the RSVP Board.

Salvation Army:

Personal records of LEK regarding service on the Salvation Army Board.

Strategic Planning Committee:

Personal materials of LEK relating to service on the Frontier's International Board

Small Business Development Center:

Personal documents relating to Mr. King's service on the Small Business Development Center Board.

Salvation Army:

Personal materials relating to service on Salvation Army Board.

Souvenir Program Committee:

Documents relating to service on a fund raising committee for Calvin Presbyterian Church, LEK's personal church.

Speech - Dominican:

Personal notes of Mr. King which were used in delivering a speech at Dominican High School representing personal matter plus substantial imput of Mr. King.

Prudential Insurance:

Correspondence and documents relating to insurance for employees of Showcase Lounge, Restaurant Food Service, King Co., CSO and the Credit Union included with file is personal correspondence of LEK with the insurance agent representing substantial input.

Storz House: (2 files)

File labeled in blue contained correspondence and memos authored by LEK and represents substantial imput.

Barbara Simon:

Contains documents authored by Mr. King and sent to Mr. King. Documents authored by Mr. King represent substantial input; the documents also, and in part, personal in nature relating to

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advertising for personal businesses of Mr. King.

Task Force:

Documents relating to service by Mr. King on the Committee on business entrepreneur.

Ten Outstanding Omahans:

Personal documents relating to JayCees.

United Van Lines, Inc.:

Documents relate to the moving of Mr. King's grandmother to Omaha and are personal in nature.

Urban League - Guild:

Documents contained in file are personal in nature relating to participation on the Urban League Board and a number of documents represent a substantial imput of Mr. King.

Vail, Colorado:

Personal correspondence to Mr. King regarding real estate in Vail, Colorado.

Videotapes:

List of videotapes which Mr. King kept at his personal residence, personal documents.

Woodson Center Membership:

Documents of personal nature relating to service on the Woodson Center membership committee.

Twin Towers:

Documents of a personal nature relating to apartments rented by LEK at Twin Towers.

Y.E.S. (Youth Emergency Services):

Contains personal materials relating to service on the Youth Emergency Service Board by LEK.

Gary West:

This file relates to a personal loan made by LEK to Gary West and documents related to the need for the loan by Mr. West and where the money would be spent.

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BOX 5: Location: Files from this box were located either in file cabinets in King's office or behind Sandy Rhode's desk.

The Family:

The documents in this file are personal in nature and a memo in the file to the "family group" represents substantial input of LEK. These documents relate to a family reunion which LEK planned.

Credit Cards and Credit Card Numbers: (2 files)

These files contain lists of credit cards and references to credit cards which are personal credit cards.

Davis and Associates:

A number of the letters contained in this file represent substantial input of LEK.

ByLaws of CSO, Inc.:

The documents contained in files were drafted with substantial input of LEK.

CSO Counseling Proposal:

The documents contained in files were drafted with substantial input of LEK.

CSO/HALEY-Makielski:

The documents contained in files were drafted with substantial input of LEK.

Exchange Club:

Personal file - documents relate to Exchange Club of Omaha, a service club which Mr. King was a member.

Douglas Williams Foundation:

Contents are personal and relate to a charitable foundation for which Mr. King served on the board.

Department of Energy Submitted to Eric West:

Documents in this file reflect substantial input of LEK.

Susan Davis:

Susan Davis company is a PR firm in Washington, DC and did substantial public relations work of a personal nature with reference to LEK personally and his personal businesses. Susan Davis Company also undertook some public relations for the credit union. Much of the correspondence and the documents contained in the file represent substantial input of LEK in addition to being

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documents, in part, of a personal nature.

Entertainment:

Documents contained in the file are personal in nature and also reflect substantial input of LEK relating to the Mr & Mrs. Club of his Church, Calvin Presbyterian.

DC House:

Documents relate to Mr. King's house in Washington DC and are personal in nature.

Fact Sheet, FCFCU:

Documents in this file involve substantial input in their creation by LEK.

Federal Express:

Many of the federal express receipts contained within this file are mailings of personal items or gifts to personal acquaintances and relatives. Additionally many other receipts relate to mailings in connection with LEK's personal businesses: King Co., Cafe Carnivale, etc.

Emergency Funding:

Proposal contained in the file was created with substantial input of LEK.

Fair Housing Counsel California:

Documents contained in this file are personal in nature relating to LEK's service on the Board of the Fair Housing Counsel of California.

Fair Housing Seminar:

Documents in this file relate to the Fair Housing Counsel California and are personal in nature.

Family Reunion:

Notes in this file are personal in nature and relate to a family reunion planned by Mr. King.

Wayne Crumbley:

Letter in this file represents substantial input of Mr. King.

DC House:

Documents in this file relate to Mr. King's house in Washington DC and are personal in nature.

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Frontiers Intern'l:

Documents in this file are personal in nature and relate to Mr. King's membership in Frontiers Intern'l Club.

Frontiers Club and Party List:

Documents in this file are personal in nature and relate to Mr. King's membership in Frontiers Intern'l Club.

General Counsel:

The documents in this file relate to Mr. King's participation of the General Counsel of the Presbyterian Church and are personal in nature.

Girls Club:

Documents in this file relate to Mr. King's position as the Chairman of the Board of the Girls Club and are personal in nature.

Global Ministries:

Documents in this file relate to Mr. King's membership on the board of Global Ministries and are personal in nature.

GOCA:

Documents in this file relate to Mr. King's participation in GOCA and are personal in nature.

Grand Opening:

Some of the documents within this file were created through substantial input of Mr. King.

Good Fellows/World Herald:

Documents in this file were created with substantial input of Mr. King.

Good Fellows:

Documents in this file were created with substantial input of Mr. King.

F.Y.I.:

Document in this file relate in part to personal vehicles of LEK.

HCD - CDAG:

Some correspondence in this file represents substantial input of LEK.

Danny Hill:

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Correspondence in file was created with substantial input of LEK.

HUD:

Notes in this file represent substantial input of LEK.

HUD Letters:

Letters in this file represent substantial input of LEK.

BOX 6

Location: Files contained in Lawrence King's office in credenza located on west wall.

[*Attorney-Client Communication and Personal]

Erickson-Sederstrom:

Letters:

*From Howard Kaplan to LEK dated 11/5/85

*From LEK to Howard Kaplan dated 3/25/86

*From Howard Kaplan to LEK dated 11/7/86

*From Samuel Clark to LEK dated 5/19/87

*From Samuel Clark to LEK dated 8/5/87

From Samuel Clark to Dan Kane dated 8/5/87 re: Opera Omaha - personal in nature

Memo from Dan Kane to Larry with attached letter from Sam Clark to Dan Kane date 12/22/89 - personal

*From Samuel Clark to LEK dated 7/8/87

*Memo from J. Russell Derr to LEK dated 9/22/86

Letter to J. Russell Derr dated 8/19/86 - Personal

*from Howard Kaplan to LEK dated 8/21/87 with attachments

Form 872-A "Special Consent to Extend the Time to Assess Tax" - Form relating to Personal income tax.

Letter dated 3/20/86 from Mitchell Premiss, District Director IRS to LEK and AGK

*Letter dated 5/6/87 from LEK to Howard Kaplan

*Memo from Samuel Clark to J. Derr dated 12/10/86

*Letter dated 12/9/86 from Sam Clark to LEK.

*From J. Russell Derr to LEK dated 9/22/86 a memo.

Letter dated 3/23/87 from Sam Clark to Dan Kane - Personal in nature.

Dated 4/23/87 letter from Sam Clark to Dan Kane - personal in nature relating to Prince King.

*Letter dated 12/22/86 from Sam Clark to LEK

*Letter dated 12/18/86 from J. Russell Derr to LEK

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*Letter dated 12/16/87 from Sam Clark to LEK
Letter dated 11/5/87 from Sam Clark to Dan Kane - letter relates to personal matters involving Mr. King's son.
Letter dated 10/30/87 from Housing Authority City of Omaha to Sam Clark - relating to a personal matter involving Mr. King's son.
Letter dated 10/22/87 from Sam Clark to Dan Kane - personal in nature relating to Mr. King's son.
*Letter dated 7/1/87 from J. Russell Derr to LEK.
Letter dated 6/12/87 from J. Russell Derr to Governor Kay Orr - letter is personal in nature and relates to political activites of Mr. King.
Letter dated 6/12/87 from J. Russell Derr to Senator David Karnes - letter is personal in nature and relates to political activites of Mr. King.
Letter dated 6/12/87 from J. Russell Derr to Congressman Hal Daub - personal in nature relating to political activites.
*letter dated 6/12/87 from LEK to Sam Clark
*Letter dated 6/10/87 from Sam Clark to LEK
*Letter dated 4/13/87 from J. Russell Derr to LEK
*Letter dated 8/25/86 from J. Russell Derr to LEK with enclosure from Glines Production, Inc.
*6/13/86 letter from J. Russell Derr to LEK with attachment.
*6/10/86 from J. Russell Derr to LEK.
6/10/86 from J. Russell Derr to Tom Raynor - personal in nature regarding personal property.
6/11/86 from J. Russell Derr to LEK
Letter dated 12/1/86 from Sam Clark to Joe Wendell - letter is personal in nature relating to a personal business of Mr. King.
Letter dated 5/26/87 from J. Russell Derr to Josephine Wandel - personal in nature relating to personal King businesses.
*Letter dated 12/2/86 from J. Russell Derr to LEK
*Letter dated 3/25/86 from LEK to Howard Kaplan
IRS Form 872-A for Lawrence E. and Alice G. King - personal in nature relating to personal income taxes.
Letter dated 6/3/87 from Ed DeMaranville to LEK - personal matter relating to possible loan to friend.

Outgoing 1987 File:

*Letter dated 1/7/87 from LK to Joseph C. Byrne, attorney at law.
this letter is personal.
Letter dated 11/85 from LEK to Margaret Wright - personal involving King Co.
Letter dated 11/16/87 from LEK to Bill Jones - personal.
Letter dated 11/16/87 from LEK to Credit Manager Ceasars Palace -

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Personal.
Letter dated 10/22/87 from LEK to Ambassador Gerald Carmen -
Personal.
Letter dated 10/16/87 from LEK to Dan Janousek - Personal.
Letter dated 10/13/87 from Sandy Rhode to Bob McGuire - personal.
Letter dated 8/21/87 from Joseph Byrne to Professional Evaluation
Services - Personal.
*Letter dated 10/26/87 from LEK to Howard Kaplan, attorney at law,
Personal
Letter dated 8/3/87 from LEK to Dan Janousek - Personal.
Letter dated 7/29/87 from Tony Evans to Margaret Wright - personal
King Co. Correspondence.
Letter dated 8/5/87 from Carolyn Rothery to Hans Luthi - Personal
Letter dated 7/1/87 from J. Russell Derr to Rod Smith - Personal
Letter dated 6/5/87 from Sandy Rhode to Dwight Dean - Personal
regarding King Co.
Memo dated 6/18/87 from LEK to Tom Cech - Personal
Memo to King Co. Employees - personal
Letter dated 9/28/87 from John Jacob to LEK regarding Showcase -
Personal.
*Letter dated 11/6/87 from Joseph Byrne to LEK - Personal
Letter dated 10/27/87 from Carol Schrader to LEK re: King Co. -
personal
Letter dated 10/19/87 from Dick Walter to LEK - Personal
*Letter dated 12/9/87 from LEK to Carolyn Rothery - Personal - re:
King Co. employee
Letter dated 11/30/87 for LEK to Wm. Johnson - Personal.
Letter dated 12/24/87 from LEK to Steven Ahern - Personal -
regarding King Co. employee
Letter dated 12/10/87 from Carolyn Rothery to Dan and Don Janousek
- Personal
Letter dated 8/28/87 from LEK to Betty Cutler - Personal.
Letter dated 7/7/87 from J. Keith Basham to Sandy Rhode -
Personal.
Letter dated 8/1/87 from LEK to Margaret Uberman - Personal.
Letter dated 6/17/87 from LEK from Helen Patterson - Personal.
Letter dated 6/16/87 from LEK to Leonard Harrold - Personal
Letter dated 6/15/87 from LEK to Chris Janicek - personal.
Letter dated 6/12/87 from LEK to Arlin Meadows - personal.
Letter dated 7/2/87 from Carolyn Rothery to Jim Jordan - personal.
Letter dated 6/26/87 from Carolyn Rothery to Greg Sapp - Personal.
Letter dated 5/13/87 from LEK to Orkin - part personal part FCFCU
Letter dated 6/11/87 from Lou Cooper to Members of the Synod
Council - Personal.
Letter dated 7/2/87 from Carolyn Rothery to Division Manager, GMAC
- personal.

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Letter dated 6/29/87 from Bob Reynolds of the Synod of Lakes and Prairies of the Presbyterian Church to Planning/Budget committee - Personal
Letter dated 5/29/87 from LEK to Tom Davis of the Boys Club - personal.
Letter dated 4/14/87 from Wm. L. Ball, III to Hal Daub - personal.
Letter dated 5/11/87 from LEK to John Cockran - personal.
Letter dated 5/7/87 from Sandra Rhode to Warren Stude - personal.
Letter dated 5/5/87 from LEK to Dear Friends: - Personal.
Typewritten notes of LEK headed "James C. Hart, Jr." personal and substantial input.
Letter dated 2/17/87 from J. Russell Derr to Josephine Walsh Wandel - personal.
Letter dated 5/5/87 from Carolyn Rothery to Bob Reed - personal.
Memo dated 3/9/87 from LEK to Carolyn Rothery - personal.
Letter dated 2/13/87 from LEK to Rev. Reggie Findlay - Personal.
Letter dated 1/6/87 from LEK to Mike Moran - personal.

Incoming 1987:

*Letter dated 6/18/87 from Samuel Clark to LEK - personal.
*Letter dated 7/8/87 from J. Russell Derr to LEK - personal.
Memo dated 7/7/87 from J. Russell Derr to LEK - Personal.
Letter dated 9/25/87 from J. Russell Derr to Sandy Rhode - personal.
*Letter dated 10/5/87 from Samuel Clark to LEK - personal.
Letter dated 10/12/87 from J. Russell Derr to Dan Kane - personal.
*Letter dated 10/6/87 from Samuel Clark to LEK - personal.
Letter dated 9/18/87 from Scott MacKenzie to LEK - personal.
Letter dated 3/23/87 from Joe Edmundson to LEK - personal.
Letter dated 6/29/87 from Juanita De Sosa to LEK and attachment - personal.
Letter dated 7/17/87 from Jon D. Hoffmaster to LEK - personal.
Letter dated 7/14/87 from Traci L. Simms to LEK - personal.
Letter dated 1/6/87 from Andy (Harold W. Anderson) to LEK - personal.
Letter dated 6/9/87 from Robert C. Blanchard to LEK - personal.
Letter dated 6/19/87 from Hal Daub to LEK - personal.
Letter dated 6/16/87 from Senator Eugene J. McCarthy to LEK - personal.
*Letter dated 6/29/87 from Carolyn Rothery to LEK - personal.
Letter dated 6/16/87 from David K. Karnes to LEK - personal.
Letter from LEK to Mrs. Dopheide - personal
Letter dated 7/5/87 from John Sinclair to LEK - personal.
Letter dated 10/9/87 from Bob Dole to LEK - personal.
Note with receipts postmarked 8/17/87 from Pavo Real Gallery to

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LEK - Personal.

Letter dated 9/27/87 from Germaine Atebery to LEK - personal.
Thank you note from Leslie Jones to LEK - personal.
Letter dated 10/12/87 from Alan McReynolds to LEK - personal.
Letter dated 10/19/87 from Karen Engelsman to LEK - personal.
Letter dated 10/7/87 from Norm Filbert to LEK - personal.
Letter dated 9/16/87 from Martha Lofton Scott to LEK - personal.
Letter dated 9/16/87 from Joanna Asison to LEK - personal.
Postcard from Wilda to LEK dated 10/12/87 - personal.
Greeting card from Andy to LEK - personal.
Letter dated 6/21/87 from Peter O. Colmain to LEK - Personal.
Letter dated 6/26/87 from Cindy Weiss to LEK - Personal.
Letter dated 6/12/87 from Willard D. Campbell, Jr. to LEK -
Personal.
Letter dated 6/25/87 from James Watson to LEK - Personal.
Letter dated 6/19/87 from "Bob" MidAmerica Council of Boy Scouts -
Personal.
Letter dated 5/26/87 from Douglas Leon to LEK - personal.
Letter dated 6/10/87 from Thomas O. David to LEK - personal.
Letter dated 5/5/87 from LEK to Evie Perkins - personal.
Passbook of LEK for Harlem Heights Federal Cr. Union No. 043 -
Personal.

Incoming 1987:

Thank you note from Joan at Robyn Weir postmarked 10/20/87 -
personal.
*Letter dated 10/27/87 from Howard Kaplan to LEK - personal
Letter dated 1/10/87 from John Fogarty Communications to LEK -
personal.
Letter dated 11/20/87 from Samuel Clark to Dan Kane - Personal.
Letter dated 7/2/87 from Samuel Clark to Dan Kane - Personal.
Letter dated 12/4/87 from Samuel Clark to Dan Kane - Personal.
Letter dated 4/27/87 from Samuel Clark to Dan Kane - Personal.
Letter dated 1/20/87 from Glenn A. Friendt to LEK - Personal.
Letter dated 11/8/86 from Ruth Noel to LEK - personal.
*Letter dated 1/16/87 from Joseph Byrne to LEK - personal.
Letter dated 1/31/87 from Wilda C. Stevenson to Mr. & Mrs. Charles
Durham - personal.
Letter dated 1/21/87 from Wilda C. Stevenson to LEK - personal.
Letter dated 11/20/86 from Joseph C. Byrne to LEK - personal.
Memo dated 3/5/87 from King Co. staff to LEK - personal.
Letter dated 3/4/87 from John to LEK with attachments - personal.
Letter dated 2/13/87 from Lt. Col. Gary L. Herndon to LEK -
personal.
Letter dated 2/6/87 from Del Weber to LEK - Personal.
Letter dated 1/26/87 from Carolyn A. Rothery to R.P. Reed -

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personal.
Letter dated 2/6/87 from Joseph C. Byrne to Kevin Morrisey - personal.
Letter dated 2/4/87 from Jack Kemp to LEK - personal.
" " Letter dated 1/5/87 from Herbert M. Patten to Marvin D. Klapp - personal.
Letter dated 2/13/87 from Joy Cooper to LEK - personal.
Letter dated 3/31/87 from Wm. R. Waldrop to King Co. - personal.
Letter dated 4/6/87 from C.J. Raffensperger to LEK - personal.
Letter from J.W. Marriott, Jr. to LEK - personal.
Letter from Doui to LEK - personal.
Letter dated 4/13/87 from Doui to LEK - personal.
*Letter dated 12/16/87 from Samuel Clark to LEK - personal.
Invitation to social functions and thank you cards for functions - personal.
Letter dated 12/11/87 from Mark L. Holtzman to LEK - personal.
Letter from Mercedes Ellington to LEK postmarked 6/12/87 - personal.
*Letter dated 3/18/87 from Carolyn Rothery to LEK - personal.
Letter from Mercedes Ellington to LEK - personal
Letter dated 4/14/87 from Alvin M. Goodwin to LEK - Personal.
Letter dated 12/4/87 from Artisan Woods to LEK - personal.
Letter dated 4/9/87 from Robert C. Wadman to LEK - personal.
Letter dated 4/21/87 from Joseph C. Byrne to LEK - personal.
Letter dated 2/18/87 from Johnny L. Askew to LEK - personal.
Letter dated 5/11/87 from Lt. Col. Gray L. Herndon to LEK - personal.
Letter dated 5/20/87 from Mrs. Gladis Ross to LEK - personal.
Letter dated 5/26/87 from Carolyn Rothery to LEK - personal.
Letter dated 5/12/87 from Kay A. Orr to LEK - personal.
Letter dated 3/11/87 from Carolyn A. Rothery to Bob Lee - Personal.
Letter from D. Leon to LEK - personal - postmarked 4/2/87.

Incoming 1988:

*Letter dated 2/29/87 from Samuel E. Clark to LEK - personal.
Letter dated 5/4/88 from Rodney Weed to LEK - personal.
Letter and bill from Asprey postmarked 3/2/88 to LEK - personal.
Letter dated 4/29/88 from Jack Kemp to LEK - personal.
Letter dated 5/19/88 from Ree Schonlau to LEK - personal.
Letter from Edward J. Perkins to LEK - personal.
Letter dated 9/16/88 from Charles M. Harper to LEK - personal.
Various personal invitations, thank you notes and personal greeting cards.
Letter dated 6/24/88 from J. Russell Derr to Michael and Betty Cutler - personal.

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Notes concerning payroll from Erickson-Sederstrom to LEK postmarked 2/29/88 - personal.
Letter dated 4/29/88 from Janice to LEK - Personal.
Letter dated 4/22/88 from Paul Aludo to LEK - personal.
Letter dated 4/5/88 from Mary Naylor to Sandy Rhode - personal.
Letter dated 4/14/88 with attachments from Randall J. Palandri to LEK - personal.
Letter dated 5/24/88 from Samuel Clark to Dan Kane - personal.
Letter dated 4/4/88 from Samuel Clark to Dan Kane - personal.
Letter postmarked 3/8/88 from John Jean Claude Jitrois - personal.
Letter dated 4/5/88 from Bill Wilson to Larry King - personal.
Memo from Keith Allerton to LEK - personal.
Letter dated 5/13/88 from Laraine Linde to LEK - Personal.
Letter from Susan W. Thomas and Janice D. Stoney to LEK - personal
*Letter dated 8/4/88 from J. Russell Derr to LEK - personal - with attachments
Letter dated 2/18/88 from Steve McCollister to LEK - personal.
Letter from H. Michael Cutler to LEK - personal.
Letter dated 9/12/88 from Pearline Mosley to LEK - personal.
Letter dated 6/3/88 from Charles E. Laczynski to LEK - personal.
Letter dated 3/15/88 from Arva to LEK - personal.
*Letter dated 5/17/88 from J. Russell Derr to LEK - personal.
Letter dated 5/18/88 from Gerald P. Carmen to LEK - personal.
Letter dated 5/10/88 from Dianne Desler to LEK - personal.
Letter from Scott B. MacKenzie to LEK - personal.
Letter dated 8/9/88 from R. W. Sayers to LEK - personal.
*Letter dated 8/10/88 from Samuel E. Clark to LEK - personal.
*Letter dated 9/20/88 from J. Russell Derr to LEK - personal.
Letter dated 8/5/88 from LEK to Barbara Simon with attached Memo - Personal
Letter dated 8/2/88 from Samuel E. Clark to Dan Kane - personal.
Letter from Leroy E. Childs to Judge Vondrasek - personal.
Letter dated 1/14/88 from Ree Schonlau to LEK - personal.
Letter dated 2/2/88 from Sam Clark to Dan Kane - personal.
Letter dated 1/7/88 from Sam Clark to Dan Kane - personal.
Letter dated 3/22/88 from David Stern to LEK - Personal.
Letter dated 12/31/88 from Frank T. Peak to LEK - personal.
Letter from Randi to LEK - personal.
Letter dated 11/27/88 from J. Russell Derr to LEK - personal.
Letter from John B. Boyce to LEK - personal.
Letter dated 2/3/88 from LEK to Doui Dominic with attached letter from Doui Dominic to LEK dated 1/26/88 - personal.
Letter dated 2/1/88 from Ruth Noel to LEK - personal.
Letter dated 2/1/88 from Ruth Noel to LEK - personal.
Letter dated 2/9/88 from Elizabeth Davis Pittman to LEK - personal.

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Letter dated 1/30/88 from Joanna Vaison to LEK - personal.
Letter dated 5/20/88 from Helen Brownell to Barry Stark - personal.
Letter dated 5/5/88 from Samuel Clark to Dan Kane - personal.
Letter dated 4/28/88 from Debbi Lombardo to LEK - personal.
Letter dated 3/3/88 from Joe and Jean Edmundson to LEK - personal.
Letter dated 3/14/88 from Samuel E. Clark to LEK - personal.
Letter dated 3/8/88 from Linda McKenzie to LEK - personal.

Outgoing 1988:

Letter dated 1/8/88 from LEK to Ray E. Nelson - personal.
Letter dated 1/8/88 from LEK to Warren Taylor - personal.
Letter dated 2/17/88 from LEK to the City Association - personal.
Letter dated 2/11/88 from LEK to Fred Brown - personal.
Letter dated 2/11/88 from LEK to Hank Vosbein - personal.
Envelope with pictures from Douglas Leon - personal.
Letter dated 12/3/87 from LEK to Douglas Leon - personal.
Letter dated 12/14/87 from Douglas Leon - personal.
Letter dated 2/29/88 from LEK to Patricia Pachuta - personal.
Letter dated 3/2/88 from LEK to Mary Jo Morrissey - personal.
Western Union Telegram dated 2/22/88 - personal.
Letter dated 2/23/88 from LEK to Harold Andersen - personal.
Letter dated 2/27/88 from LEK to Hans Luthi - personal.
Notes regarding Antoine Beth - personal.
Letter dated 2/29/88 from LEK to Patricia Pachuta - personal.
Letter dated 3/7/88 from Floyd T. Waterman to Ms. LaGree S. Daniels - Personal.
Letter dated 3/4/88 from LEK and Floyd Waterman to LaGree Daniels - personal
Letter dated 3/7/88 from Wm. W. Jennings, Jr. to Phyllis Hicks - personal.
Letter dated 2/11/88 from Marc L. Holtzman to Margaret McCulla - personal.
Letter dated 3/10/88 from LEK to Louise Hairston - personal.
Letter dated 3/2/88 from LEK to Mary Jo Morrissey - personal.
Letter dated 3/4/88 from LEK to Wm. J. Bennet - personal.
Letter dated 4/29/88 from LEK to Phyllis Hicks - personal.
Letter dated 4/28/88 from LEK to Washington Park Gourmet - personal.
Letter dated 5/26/88 from LEK to LeGree Daniels - personal.
Letter dated 4/13/88 from Carolyn Rothery to Alice P. King - personal.
Letter dated 4/15/88 from LEK to Pastor Bob Timberlak - personal.
Letter dated 6/27/88 from LEK to J. Allen Mactier - personal.
Letter dated 6/30/88 from Samuel Clark to Karen Lloyd - personal.

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Letter dated 8/28/88 from LEK to Chief Robert Wadman - personal.
2 letters dated 9/15/88 from LEK to Scott and Donnie - Personal.
Letter dated 7/14/88 from LEK to Douglas O. Deshazer - personal.
" " Letter dated 5/5/88 from Shanita Spencer to Linda Glowe -
personal.
Letter dated 1/21/88 from LEK to Dwayne Dominic - personal.
Letter dated 8/28/88 from LEK to Terry Thomas - personal.
Letter dated 8/9/88 from Shanita Spencer to Wm. Johnson, M.D. -
personal.
Letter dated 8/22/88 from LEK to The Doug Williams Foundation -
personal.

[NOTE: Balance of files in Box 6 are personnel type files and many
of the files contain memos or letters authored by LEK or in which
LEK had substantial input. There was substantial input into all
the personnel files by LEK, however, specifically noted below are
files concerning non-FCFCU/CSO employees who may have been employed
by the King personal businesses]

Charles Brizendine:

Memo dated 3/2/88 to various staff members from Bookkeeping Dept. -
LEK had substantial input into this Memo.
Letter from Charles Brizendine to King Enterprises - 2/18/88. Mr.
Brizendine was a part-time King Co. employee as well as a part-
time employee of FCFCU.

Judith Carroll:

Worked part-time for FCFCU/CSO and also worked part-time for the
various King businesses including Showcase Lounge and King Co. and
Mr. King personally; various documents in file relate to her
employment with the King businesses and are personal in nature.

Shanita Spencer:

This file contains a personal promissory note between Shanita
Spencer and LEK.

Barbara Moore:

One of the memos in Barbara Moore's files dated 12/2/87 involves a
personal matter regarding a Frontier's International program.
A receipt and funeral purchase agreement. This document is
personal and relates to LEK personally obtained for the
funeral of Barbara Moore's son.

Odell Evans:

The memos and correspondence in this file are personal. Mr. Evans
was a King Co. employee.

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Rodney Evans:

All of the documents contained in the file involve Mr. Evans' employment as both an employee of Cafe Carnivale and King Co. and are personal in nature.

Stephen Fink:

Documents in this file are personal in nature.

Martha Haynes:

Memo in this file is personal in nature and relates to her employment with Showcase Lounge.

James D. Hilyard:

Documents in this file are personal in nature.

James D. Jordon:

Documents in this file are personal in nature in that Mr. Jordon was a King Co. employee.

Dan Kane:

Some of the documents in this file relate to personal activities in which Mr. King was involved.

Mrs. Jetter:

Correspondence in this file is personal relating to Masa, Inc., a King business.

Vernell Magett:

Documents in this file are personal in nature relating to Mr. Magett's employment with King Co.

Roy Nelson:

Documents in this file are personal in nature and relating to Mr. Nelson as a King Co. employee.

Bob O'Toole:

Documents in this file are personal and relate to Mr. O'Toole's employment with Cafe Carnivale and Showcase.

Omar Tinsley:

Documents in this file are personal in that Mr. Tinsley was a King Co. employee.

Patrick Thompson:

Documents in this file are personal in nature in that Mr. Thompson was a King Co. Employee.

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Kurtis H. King:

Documents in the file relate to handling matters for Mr. King's personal businesses.

Anthony T. Evans:

Documents in this file are personal in nature relating to Mr. Evan's employment with King Co.

Appraisal:

13232 No. River Road and 3701 N. 45 - documents contained in this file are personal.

Loose letter in Box 6:

*Dated 8/2/88 from Samuel E. Clark to LEK - personal and attorney-client privilege.

Albert Beverly:

Documents in this file are personal relating to Mr. Beverly's employment at Showcase Lounge.

Staff 87:

Memo from LEK dated 12/26/87 to staff of FCFCU and King personal businesses.

Karen Lloyd:

Memo dated 8/8/88 from LEK to Karen Lloyd are personal.

Jenice A. Harrison:

Memo in this file dated 9/3/87 from Jenice Moore (Harrison) to LEK is personal in nature.

Supervisor re: Committee:

Letter and envelope dated 2/8/88 from Ms. Spencer to LEK is personal.

Financial statements of PaGoMo, Inc. - personal

BOX 6A

E. Thomas Harvey, Jr.: substantial number of memos and other writings authored by LEK, Jr., in which he had substantial participation in their making or creating. Therefore, all documents showing LEK, Jr. as the author of such memos should be identified to him as a substantial contributor.

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Memo: substantial number of memos and other writings authored by LEK, Jr., in which he had substantial participation in their making or creating. Therefore, all documents showing LEK, Jr. as the author of such memos should be identified to him as a substantial contributor.

Envelope addressed to CSO: all documents with regard to a HUD grant contain substantial input of the Defendant King insofar as review before submission and signing off as the manager/director.

Articles of Incorp. 501C3: LK had some input with respect to the preparation, making, and creation of these documents.

Showcase Bar: All documents contained in this file are the personal property of Mr. King.

White envelope with no addressee but showing the U.S. Dept. of Justice as the addressor contains a request from the IRS which is the personal property of Mr. King.

Working Group Contract: LK had some input but not significant input.

Document addressed to LK showing the Tom written by longhand on the outside of the envelope from Housing and Community Development Department of City of Omaha - LK had some input but not significant input.

Envelope showing on the outside CSO Board Meeting Minutes Mr. King - all documents are personal to Mr. King

Scott Lawson: All typewritten material is personal to Mr. King, and the documents showing they were authored by him contain his substantial participation in their creation and making.

Episcopal Church "Howard's office" - all documents are personal to Mr. King except those documents relating to receipt of grants on behalf of CSO or FCFCU.

Cafe - "Donna Davis" - all documents are personal to Mr. King.

"Think, Sally" - All such documents are personal to Mr. King.

Unmarked file - relating to a former employee Mcpherson, the memo from LEK, Jr. dated 6/21/79 was authored by Mr. King.

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Budget Finance Committee Presbyterian (Omaha) these documents are personal to Mr. King. He was the chairman of the Finance committee of the Presbytery of Missouri River Valley/Omaha.

SDOP: All material contained therein is personal to Mr. King.

Bundle of Memos and letter: Mr. King had substantial participation in the creation and making of those memos which identify him as the author.

Doug Hughes: All documents are personal to Mr. King.

Cleos: All documents contained in this file are personal to Mr. King.

"CC": All documents are personal to Mr. King.

BOX 6B

All files, correspondence and documents of whatever kind located in the file labeled "Larry's tax stuff" are the personal property of the Defendant King.

All documents contained in the file "Lawrence E. King" are personal to Mr. King.

With respect to file labeled "Tim Ogle" those files are the personal property of Mr. King.

With respect to file labeled "Frank Clark" some of these documents are credit union documents, specifically those which relate to his credit union employment, and the remaining documents are the personal property of Defendant King.

With respect to the handwriting of Mr. King on two documents, 1) a memo to Mr. King from Jerry Quintero, and 2) a document "bonus structure" both of which are contained in clear envelopes, the handwriting identified to Mr. King with the long, handwritten portion of each document, with the exception of the note from Tom "this is the current bonus structure" was prepared by Mr. King.

[SPECIAL NOTE] Box 4: Contains personal financial statements of Larry and Alice and a 1983 copy of a tax return, which are personal property of King. Boxes 3 and 4 appear to be a conglomeration of documents which came from several different areas.

NCUA WEST OMAHA DEPOSITORY
BOX REVIEW

NCUA BOX REVIEW

The following review is from the Boxes of documents contained at the document depository controlled by the National Credit Union Administration in West Omaha.

BOXES 1-13

Appear to be files classified by customers of share accounts and share certificate accounts. LEK is unaware of where these files were located and had no participation of the documents. They are not the personal property of LEK. Apparently contain active files.

BOXES 14-33

Contained in file cabinets marked with the same numbers. These documents appear to be active share and share certificate files. LEK is not aware as to where these documents are maintained nor did he have any participation of the preparation of them. They appear not to be the personal property of LEK.

BOXES 35-51

Contain apparently inactive CD and share account files. These files would have been kept under the control of the Bookkeeping Dept. LEK did not have any active participation in the preparation or creation of these documents.

BOXES 100-162

Appear to be teller work check copies and vouchers. These items correspond to previous years to the vouchers and copies of checks which are found in the corresponding boxes of the federal depository. To the extent that these boxes contain copies of checks that were written for personal expenses of LEK as described in previous boxes, those documents would be personal property of LEK or his personal businesses.

BOXES 163-168

Appear to be the same kinds of documents except the list at the NCUA show that these "were at IRS" for whatever that means. These documents would be the personal property of LEK to the extent that they paid personal expenses of either himself, his businesses or his immediate family.

BOXES 169-213

To the extent that these boxes contain checks, vouchers, etc. that relate to personal expenses of LEK, his immediate family and his personal businesses, those would be the personal property of LEK. By way of example, there is a check paid to the order of Old Market Limousine Service in the amount of \$19,996.33 bearing the date of 3/9/87, check No. 88963. This would be a personal expense of LEK and would correspond with an invoice contained in the file which

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BOX REVIEW

would be also personal invoices of LEK.

BOXES 214-215

Unavailable for review because they are contained in Mr. Kirchner's office and we are advised they are currently under review. We have not been permitted access to Mr. Kirchner's office.

BOXES 300-344

These appear to be generally books, general ledgers, teller reports, daily reports, transaction journals and other bookkeeping records of the credit union. These documents show transactions relating to LEK, his immediate family, or his personal businesses, they would be considered to be the personal property of LEK. LEK had not participation of the preparation of these documents, except for a minimal number of transactions which LEK may have recorded in the early 70's of the books and records of the corporation.

BOX 400

Contains 1984 invoices and many of these invoices relate to personal bills of Mr. King and his business and are very similar to the documents previously itemized for 1987 and 1988 (see Boxes 57 and 59 of the Search Warrant Documents). These 1984 invoices relate to Mr. King's personal businesses, family gatherings and invoices related to personal travel. Mr. King believes that these boxes were probably in storage at the time of the close of the credit union. These files were formerly kept in Sandy Rhode's area in the executive suite at FCFCU, but were in storage at the time of the close of the FCFCU.

BOX 401 (Invoice file for 1985 similar to search warrant material in boxes 57 and 59)

1985 invoices relating to purchases of a personal item such as a boat, invoices relating to Limousine services, documents relating to political funding, invoices relating to personal travel of Mr. King and his family, bills for personal legal fees from Byrne-Rothery and also personal correspondence from Byrne-Rothery to Mr. King. These files were formerly kept in Sandy Rhode's area in the executive suite at FCFCU, but at close were in storage.

BOX 402 (Invoice file for 1985 similar to search warrant material in boxes 57 and 59)

1986 invoices and bills regarding donations to organizations, personal bills regarding Mr. King's boat bill, relating to his personal businesses, personal travel of Mr. King, legal fees, and the like. These files were formerly kept in Sandy Rhode's area in the administrative suite at FCFCU, but at the time of closing of FCFCU had been placed in storage.

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BOX 403 (Invoice file for 1985 similar to search warrant material in boxes 57 and 59)

1987 Invoices and bills - these were kept in Sandy Rhode's area in the administrative suite. Many of the invoices in this box are personal in nature such as those relating to Mr. King's Washington DC house, invoices for restaurants, King Co. bills, clothing, donations, fund raising activities. It also contains some personal correspondence of Mr. King.

BOX 406

Identified by the inventory of the NCUA as "documentation for cash data base" these appear to be hand authorization cards for the withdrawal from various accounts of the credit union of cash. To the extent that these items would relate to cash withdrawn from a King personal account, for LEK's personal travel, or other personal expenses of his, his immediate family and his personal businesses, they are King's personal property. LEK may have had input into the creation of these documents to the extent that he requested Sandy Rhode or some other employee to prepare authorization cards.

BOX 500

First part of documents in file are personal property relating to the 1984 Republican Convention, and were stored in Mr. King's office.

Sack of keys identified as coming from King's desk which LEK believes are his keys - all personal keys.

Remainder of material is not LEK's personal property.

Remaining files are not personal files but upon information and belief LEK believes the files came from either Sandy Rhode's office or Tom Harvey's office.

BOX 501

LEK states that all information contained in that box is personal property and would have been stored in LEK's office.

BOX 502

Files would have been stored behind Sandy Rhode's desk and maintained by her; two files are personal to LEK, the Christmas List file and the file containing the material from Steak International.

BOX 503

Mr. King believes that this material came from Dan Kane's office, or behind the west wall in the secretary's area; all materials are personal to Mr. King.

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BOX 504

Material appears to have come from Shanita Spencer's office; all documents appear to be personal to Mr. King.

BOX 505

These documents appear to have come from Sandy Rhode's office or on the west wall of the secretary's office and appear to be all personal property of LEK.

BOX 506

The material appears to have come from LEK's office.

Contract and Insurance - King files are personal with the exception of some documents in the Contract file.

BOX 507

Comprised of documents which came from Sandy Rhode's office space. Black bound book is personal to LEK. Documents contained in file House - 2021 Wirt St. are personal to LEK. File relating to Lincoln Univ. Club is personal. Contained within this box are four free standing documents: memo to LEK from Dan Kane; Agreement between LEK and Rodney Evans, Insurance premium notice and two insurance premium notices which are personal to LEK. File relating to Saab 1985 is personal. Jeep Cherokee 85 file, Grand Wagoneer 85 file are personal.

BOX 508

Located in either LEK's office or in Sandy Rhode's office space. Following files are personal to Mr. King: Carol Rogers, Bob McGuire, Dancellington, keys contained in the manilla envelope.

BOX 509

Located in either LEK's office or in Sandy Rhode's office. All documents in the file are personal except the following: Contracts, Old Deposits, Letters of Support, Franklin USA, Fair Housing Workshop, Franklin Credit Union Board of Directors.

BOX 510

Came from the west wall of the area occupied by the Administrative Assistants, Kurt King and Terrance Powerll. All files are personal except the following: Adopt-A-School, Conditioning New, Annual Meeting Reports, 1973 CSO, Franklin 1973, Articles 1974, Articles 1975 thru 1987, Clippings-Articles, 1988 Articles, Clippings and Newsletters, Bishops Equipment, Ford Pictures, Burglary, CATS, CD-GB Program, City Contracts, Consumer Affairs, Comprehensive Directory and Referral Program, Counciling City, Port Actions, Franklin South Office, Business Technology Center.

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BOX 511

LEK believes that the files came from Sandy's office. All documents are personal except the following: Franklin USA TA Grant, Salary Advances, Supervisory Committee, Franklin, Cox Cable, portions of the Assoc. Underwriters, portions of the Memos Out and Memos In, Misc. Insurance Material.

BOX 512

It appears that these files came from either LEK's locked area or Sandy Rhode's locked area. All files are personal except the following: Internal Revenue, Local 1140 Internorth, Loan Policies, Mom's, Inc., Loan Policies, Frank Mann, "MCI", NHS Loan Servicing, Office Products, OEDC, Omaha Area Board of Realtors, Operation Bridge.

BOX 513

Appears to be old material out of Joel Rogers desk or work space - none of which is personal to LEK.

BOX 514

Came from LEK's office or the Administrative Assistant's area. Material relating to the political matters is personal, but the remainder appears to be non-personal.

BOX 515

LEK does not know where these documents came from and they appear to be all non-personal documents.

BOX 516

Appears to be material that came from all over, and appears as well to be non-personal.

BOX 517

Appears to have come from some space within CSO, and contains non-personal material.

BOX 518

Appears to have come from CSO space and appears to be non-personal.

BOX 519

LEK is not aware of where the documents came from and all materials are non-personal.

BOX 520

LEK is not aware of where the documents came from and all materials are non-personal.

BOX 521

LEK does not know where the documents came from and are not

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personal.

BOX 522
LEK is unaware, the material appears to have come from bookkeeping, all is non-personal.

BOX 523
Old material which apparently came from Joel Roger's workplace - none of it is personal.

BOX 524
Appears to have come out of Tom Harvey's office - none of it is personal.

Box 525
LEK does not know the location of this box. All are non-personal except the files relating to Consulting and Church of the Intercession, which are personal to LEK.

BOX 526
LEK is not aware where the documents came from and the files are non-personal.

BOX 527
LEK believes these materials came out of Sandy's office and are personal.

BOX 528
LEK does not know the location of these materials - non-personal.

BOX 529
LEK does not know the location of these materials - non-personal.

BOX 530
LEK does not know the location of these materials and non-personal.

BOX 531
LEK does not know the location of these materials and they are non-personal.

BOX 532
LEK believes these files were in storage. All documents personally addressed to LEK, particularly those labeled "Personal and Confidential" would be the personal property of LEK. Particularly personal within the file are various attorney/client communications from Mr. Joe Byrne to LEK about several personal matters relating to LEK's personal, legal and financial circumstances. Correspondence relating to the Republican National Convention in 1984 are personal property of LEK. Correspondence between Susan A. Davis and LEK in the file is personal. Those communications of

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Byrne and Rothery to the extent that they relate to work not performed for FCFCU or CSO are personal to LEK. Letter dated 8/1/84 from Professional Leasing re: 1982 Mercedes Benz is personal to LEK. Box contains outgoing and incoming correspondence for the years 1984 through 1986. Much of the incoming and outgoing correspondence is personal to Mr. King in the sense that it relates to either personal matters of Mr. King, or matters of his personal businesses. By way of example, there is a personal and confidential letter dated 11/8/84 from Mr. Joseph C. Byrne, attorney to Mr. King re: Calvin Ed-U-Care Center, there is another letter from Mr. Byrne to Mr. King labeled personal and confidential, re: insurance coverage on L & M Services, Inc. and Massa, Inc., these files are of a kind and very similar in content to Box 6 contained in the federal depository, for which this Affidavit contains a specific description of documents. By way of further example is correspondence and attached pleading from Carolyn Rothery of the Byrne Law Firm to Mr. King with reference to a personal law suit in the municipal Court of the City of Omaha, C84-3136M. By way of example of the outgoing 1985 file are the following: personal and confidential letter to LEK from Joseph Byrne re: Boystown donation by Mr. King personally. Letter of 11/12/86 from Byrne & Rothery to LEK marked personal and confidential re: operating costs for the King Co. Another example is a personal memo from LEK to Ron McDuffy re: Jamaican properties. The attached correspondence from Byrne & Rothery dated 11/6/85 re: Jamaica real estate. Several other letters and memos of Byrne and Rothery re: personal business of Mr. King or his personal businesses. Other example is a letter dated 1/25/84 from Joe Byrne to Kevin Morrissey re Massa, Inc. relating to return of a duplicate payment by Massa, Inc. Another example is a letter from Lawrence E. King to Howard Kaplan dated 10/24/85 re: Jamaica trip. Another example is a 7/27/84 letter to Jackson Graham from LEK in regard to the Dallas Republican National Convention. Another example in the incoming 1985 file is a letter from Joe Byrne labeled personal and confidential re: Restaurant Food Service of Omaha, Inc. Other examples: letter from the Ritz Carlton dated 1/24/85 to Mr. King. A letter dated 1/31/85 from Joe Byrne marked personal and confidential re: plumbing repairs at 13232 North River Road; personal and confidential letter to Mr. King dated 9/30/85 from Terry Wade of the Susan Davis Company, pile of loose papers contained in box 532 with letters like: 6/13/85 marked personal and confidential from Joe Byrne re: Mr. King's lease. Examples of outgoing 1986 correspondence that is personal is a letter by LEK dated 9/9/86 to the Health Services Program of the Pan American Devel. Foundation with reference to a \$1,800 personal contribution to the foundation to sponsor preparation, packaging and shipment of medical equipment to Kingston, Jamaica Hospital; letter to Howard Kaplan dated 1/15/86 with respect to the people in "Jamaica" contained in the outgoing 1986 file; letter from J. Derr to Jessica

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James dated 8/5/86. Examples of the 1986 incoming file would be a letter dated 5/28/86 from J. Derr to LEK re: freight claim concerning the chandelier; letter from Bahr Vehmeer and Haecker, architects dated 4/2/86 with reference to remodeling at 2021 Wirt St.; letter from Joe Byrne to LEK marked personal and confidential re: cash pickup for Cleopatra's; letter of 2/26/86 from Joe Byrne to John P. Ford of Schmid-Ford re: King v. Max I Walker; homeowner application of Terry Weiss dated 2/6/86 showing an additional insured as the King Co.; letter of 2/13/86 to LEK from Joe Byrne re Akasaka; letter from Joe Byrne dated 1/14/86 to LEK marked personal and confidential re: Mr. King's (tape went blank); personal letter to LEK from the American Cancer Society re: \$750 contribution; 5/5/86 to LEK marked personal and confidential from City Wide Rock and Excavating Co. re: electric fence as well as repairs to the wiring for driveway lights; additionally there is much correspondence between Mr. King and various members of the church community which is personal, much correspondence between political associates of Mr. King and Mr. King. These files are also full of correspondence between Mr. King and charitable organizations which are personal. Correspondence concerning Mr. King personally or any of his personal businesses would be personal property of Mr. King as well, an example is a letter from Byrne Rothery, etc. marked personal and confidential re: Kendall Barns to LEK; letter of 11/21/86 from J. Russell Derr to LEK re: King Co. Omaha Custom Cut; letter from Joe Byrne to LEK re: Cleopatra's Restaurant and Lounge dated 1/25/85.

BOX 533

There are some incidental personal documents in this box but they appear to be of no consequence or importance. Files appear to have come from perhaps the South office and, specifically, perhaps Martha Johnson's office, although Mr. King is not certain of that.

BOX 534

Appears to have come out of accounting and appears non-personal.

BOX 535

Appears to have come out of accounting and appears non-personal.

BOX 536

Appears to have come out of accounting and appears non-personal.

BOX 537

Appears to have come out of accounting and appears non-personal.

BOX 538

LEK does not know where these items came from nor are they personal.

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BOX 539

LEK is not aware where these items came from. LEK was on Board of Knoxville College but does not believe the documents are personal.

BOX 540

Many items are personal, but do not appear to be significant. LEK is not aware of where they came from.

BOX 548

All documents came from LEK's office. Many of the documents contained in this file are personal. Example: labeled Erickson and Sederstrom contains all personal documents as well as very sensitive attorney-client privilege documents. Many of the personnel files which are contained in Box 548 relate to employees of the King Co. including the following: Charles Bellemey, Allan Conrad, Marc Holtzman, Doug Hughes, David Madsen, Jay Morrell, Bob O'Toole, Greg Sapp, and Laurie Schulz.

BOXES 549-553

Located in storage and appear non-personal.

BOX 551

This box comes from the desk of Terrance Powell (within the administrative area), an administrative assistant of Mr. King. File contains materials of a personal nature which Mr. Powell dealt with on behalf of Mr. King, including such items as copies of personal profiles of Mr. King, personal memos, notes regarding community committees on which Mr. King was active and similar personal matters.

BOX 554

The contents of this box came from Gwen Pierce's area within the administrative office suite. This box contains mainly personal records that Ms. Pierce kept on behalf of Mr. King, in that she was Sandy Rhode's assistant. Included in this box are such matters as Apollo Bach Travel, Mr. King's personal tickler file, invoices regarding personal travel of Mr. King, travel schedule of Mr. King.

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BOX 558

This box contains materials from Shanita Spencer's office, included within the box are files concerning Showcase Lounge including such items as insufficient funds checks of Showcase which Ms. Spencer was handling, Showcase contracts, matters relating to the National Black Republican Council and the Republican party and other political matters. Files relating to Brownell-Talbot are personal in nature, files relating to personal donations, files relating to C.O.M.A., personal in nature, files concerning Congressional Black Republican Caucus. Also contained in the file are memos to Ms. Spencer regarding Mr. King's personal businesses and other personal matters or committees which she may have dealt with on his behalf.

BOX 559

Some of the contents of this box came from the executive suite, specifically the files of Terrance Powell an administrative assistant to Mr. King and involved personal matters such as the Showcase Lounge and personal travel of Mr. King.

BOX 560

Contained within Box 560 are files of Sandy Rhode area in the executive suites which relate to political committees and organizations in which Mr. King participated and are personal in nature and also related to community activities and committees which Mr. King is active in and are also personal.

Files of Dan Kane - these files mainly relate to personal political activities and organizations which Mr. King was active in and are personal in nature and also some of the Dan Kane file relate to travel which is personal in nature.

BOX 562

These documents came from the office of Barbara Moore and a file regarding Brownell-Talbot fund raiser 88 is personal in nature relating to one of Mr. King's fund raising activities.

BOX 563

These are files of Judith Carroll. Files in this box are personal in nature relating to the following files: Fund raiser -King Companies - Frontier's Intern'l fund raisers - Exchange Club Luncheon - Celebrate in Youth file - Chanticlair - Cafe Carnivale, small parties - Aksarben Membership Drive 1987 - Thomas Tipton Concert - Unlabeled file containing "notes 3/4/87 are personal and relate to Chateau Lounge" - Family reunion - Omaha Symphonic Chorus - materials in file labeled Franklin/CSO, promotional materials are in fact personal in nature - Frontier's Style Show - Luncheon. All files cited within this box relate to promotional work which Ms. Carroll performed for Mr. King personally.

IN THE UNITED STATES DISTRICT COURT
For the District of Nebraska

UNITED STATES OF AMERICA,) CASE NO. CR89-0-63
Plaintiff,)
vs.) AFFIDAVIT OF STEVEN E. ACHELPOHL
LAWRENCE E. KING, JR. and)
ALICE PLOCHE KING,)
Defendants.)

STATE OF NEBRASKA))
COUNTY OF DOUGLAS) ss

STEVEN E. ACHELPOHL, being first duly sworn upon oath states
and deposes as follows:

1. Affiant is one of the Court-appointed counsel for the
Defendant Lawrence E. King, Jr..

2. He has represented the Defendant in this matter and on a
limited basis in a related civil matter involving the National
Credit Union Administration Board since on or about May 19, 1989.

3. Attached hereto, marked Exhibit "A" and incorporated
herein by this reference is an inventory which has been supplied to
the undersigned in connection with documents which are housed at
the West Omaha Depository under the control of the National Credit
Union Administration.

4. Upon information and belief, Exhibit "A" is the only
inventory of documents which exists with respect to the documents
of the FCFCU and CSO housed at the NCUA Depository. Further, upon
information and belief, Exhibit "A" is not an inventory of
documents which were seized pursuant to the NCUA's Conservatorship
Order, but rather only an inventory of documents held at the
Depository from whatever source derived (ie. it includes documents
obtained by NCUA through administrative subpoena).

5. Upon information and belief, your Affiant states that

there is no inventory in existence identifying what documents were seized by the NCUA pursuant to its conservatorship order. Further upon information and belief, your Affiant states that because no inventory was ever made to his knowledge of NCUA seized documents, there is no method to determine where such documents were situated within the FCFCU and CSO when they were seized.

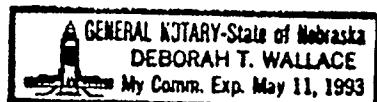
6. Upon information and belief, Affiant states that there is no method available by which an inventory could be reconstructed, showing with reasonable particularity what documents, records, and things were seized by the NCUA pursuant to its Conservatorship Order, and from what location such documents were seized.

FURTHER AFFIANT SAYETH NOT.

Steve Achelpohl

Steven E. Achelpohl

SUBSCRIBED AND SWORN to before me this 21st day of December, 1990.



Deborah T. Wallace

Notary Public

6-27-90

RUN #156

BOX NUMBER	YEAR/FROM	MONTH/TO	CONTENTS	NOTES 1	NOTES 2	COUNTER
1	99		CUSTOMER SHARE ACCOUNT AND SAVINGS FILES			
100	299		TELLER ENVELOPES AND CHECK CARBONS			
300	399		TRANSACTION JOURNALS, BOOKS, LEDGERS			
400	499		BILLS/INVOICES			
500	599		GENERAL FILES			
600	699		LOANS			
700	799		HOUSING COMMUNITY DEVELOPMENT (HCD) LOAN			
800	899		DIRECT DEPOSIT AUTHORIZATIONS/UTILITIES			
900	999		OTHER			
1000	1099		SUBPOENAED DOCUMENTS			
1100	1199		NCUA/FINANCIAL ADVISORY GROUP WORK FILES			
1 90	3827		ACTIVE CD & IRA ACCOUNTS		12	
2 3827	4852		ACTIVE CD & IRA ACCOUNTS		13	
3 4874	6767		ACTIVE CD & IRA ACCOUNTS		14	
4 5772	6914		ACTIVE CD & IRA ACCOUNTS		15	
5 6926	7818		ACTIVE CD & IRA ACCOUNTS		16	
6 7852	878		ACTIVE CD & IRA ACCOUNTS		17	
7 8779	9496		ACTIVE CD & IRA ACCOUNTS		18	
8 9515	10205		ACTIVE CD & IRA ACCOUNTS		19	
9 10206	10899		ACTIVE CD & IRA ACCOUNTS		20	
10 10900	12101		ACTIVE CD & IRA ACCOUNTS		21	
11 12102	12398		ACTIVE CD & IRA ACCOUNTS		22	
12 12399	12832		ACTIVE CD & IRA ACCOUNTS		23	
13 12853	13596		ACTIVE CD & IRA ACCOUNTS		24	
14 1	2059		ACTIVE SHARE FILES		25	
15 2060	3361		ACTIVE SHARE FILES		26	
16 3352	4500		ACTIVE SHARE FILES		27	
17 4101	5791		ACTIVE SHARE FILES		28	
18 5/96	6870		ACTIVE SHARE FILES		29	
19 6871	7834		ACTIVE SHARE FILES		30	
20 7835	8720		ACTIVE SHARE FILES		31	
21 8729	9562		ACTIVE SHARE FILES		32	
22 9563	10230		ACTIVE SHARE FILES		33	
23 10231	10940		ACTIVE SHARE FILES		34	
24 10941	116:5		ACTIVE SHARE FILES		35	
25 11626	12530		ACTIVE SHARE FILES		36	
26 12531	13313		ACTIVE SHARE FILES		37	
27 13314	15580		ACTIVE SHARE FILES		38	
28 1747	2947		CONSOLIDATED SHARE FILES		39	
29 2948	4664		CONSOLIDATED SHARE FILES		40	
30 4665	6390		CONSOLIDATED SHARE FILES		41	
31 6401	8319		CONSOLIDATED SHARE FILES		42	
32 8320	9645		CONSOLIDATED SHARE FILES		43	
33 8320	1746		CONSOLIDATED SHARE FILES		44	
34 26	10540		MISCELLANEOUS SHARE FILES		45	
35 1	1066		INACTIVE CD & SHARE FILES		46	
36 1067	1539		INACTIVE CD & SHARE FILES		47	
37 1543	1951		INACTIVE CD & SHARE FILES		48	
38 1952	2378		INACTIVE CD & SHARE FILES		49	
39 2379	2778		INACTIVE CD & SHARE FILES		50	
40 2779	3201		INACTIVE CD & SHARE FILES		51	
41 3203	3674		INACTIVE CD & SHARE FILES		52	
42 3627	4075		INACTIVE CD & SHARE FILES		53	
43 4076	4470		INACTIVE CD & SHARE FILES		54	
44 4471	4917		INACTIVE CD & SHARE FILES		55	

DEFENDANT'S
EXHIBIT
A

BOX NUMBER	YEAR/FRM	MONTH/TO	CONTENTS	NOTES 1	NOTES 2	COUNTER
45	4921	5401	INACTIVE CD & SHARE FILES			56
46	5402	5988	INACTIVE CD & SHARE FILES			57
47	5992	6600	INACTIVE CD & SHARE FILES			58
48	6602	7334	INACTIVE CD & SHARE FILES			59
49	7135	8486	INACTIVE CD & SHARE FILES			60
50	8497	9964	INACTIVE CD & SHARE FILES			61
51	9957	11578	INACTIVE CD & SHARE FILES			62
100	1982	JAN/MAR	TELLER WORK/CHECK COPIES & VOUCHERS			63
101	1982	APR/JUNE	TELLER WORK/CHECK COPIES & VOUCHERS			64
102	1982	APR/JUNE	TELLER WORK/CHECK COPIES & VOUCHERS			65
103	1982	JUL/SEP	TELLER WORK/CHECK COPIES & VOUCHERS			66
104	1982	JUL/SEPT	TELLER WORK/CHECK COPIES & VOUCHERS/INCLUDES 9/81			67
105	1982	OCT/DEC	TELLER WORK/CHECK COPIES & VOUCHERS			68
106	1982	OCT/DEC	TELLER WORK/CHECK COPIES & VOUCHERS			69
107	1983	JAN	TELLER WORK/VOUCHERS			70
108	1983	FEB	TELLER WORK/VOUCHERS			71
109	1983	MAR	TELLER WORK/VOUCHERS			72
110	1983	APR	TELLER WORK/VOUCHERS			73
111	1983	MAY	TELLER WORK/VOUCHERS			74
112	1983	JUNE	TELLER WORK/VOUCHERS			75
113	1983	JULY	TELLER WORK/VOUCHERS			76
114	1983	AUG	TELLER WORK/VOUCHERS			77
115	1983	SEPT	TELLER WORK/VOUCHERS			78
116	1983	OCT	TELLER WORK/VOUCHERS			79
117	1983	NOV	TELLER WORK/VOUCHERS			80
118	1983	DEC	TELLER WORK/VOUCHERS			81
119	1983	JAN/MAR	TELLER WORK/CHECK COPIES ALSO OCT/DEC			82
120	1983	APR/SEPT	TELLER WORK/CHECK COPIES			83
121	1984	JAN	TELLER WORK/CHECK COPIES & VOUCHERS			84
122	1984	FEB	TELLER WORK/CHECK COPIES & VOUCHERS			85
123	1984	MAR	TELLER WORK/CHECK COPIES & VOUCHERS			86
124	1984	APR	TELLER WORK/CHECK COPIES & VOUCHERS			87
125	1984	MAY	TELLER WORK/CHECK COPIES & VOUCHERS			88
126	1984	JUNE	TELLER WORK/CHECK COPIES & VOUCHERS			89
127	1984	JULY	TELLER WORK/CHECK COPIES & VOUCHERS			90
128	1984	AUG	TELLER WORK/CHECK COPIES & VOUCHERS			91
129	1984	SEPT	TELLER WORK/CHECK COPIES & VOUCHERS			92
130	1984	OCT	TELLER WORK/CHECK COPIES & VOUCHERS			93
131	1984	NOV	TELLER WORK/CHECK COPIES & VOUCHERS			94
132	1984	DEC	TELLER WORK/CHECK COPIES & VOUCHERS			95
133	1985	JAN	TELLER WORK/CHECK COPIES & VOUCHERS			96
134	1985	FEB	TELLER WORK/CHECK COPIES & VOUCHERS			97
135	1985	MARCH	TELLER WORK/CHECK COPIES & VOUCHERS			98
136	1985	APR	TELLER WORK/CHECK COPIES & VOUCHERS			99
137	1985	MAY	TELLER WORK/CHECK COPIES & VOUCHERS			100
138	1985	JUNE	TELLER WORK/CHECK COPIES & VOUCHERS			101
139	1985	JULY	TELLER WORK/CHECK COPIES & VOUCHERS			102
140	1985	AUG	TELLER WORK/CHECK COPIES & VOUCHERS			103
141	1985	JUL/AUG	TELLER WORK/CHECKS			104
142	1985	SEPT	TELLER WORK/CHECK COPIES & VOUCHERS			105
143	1985	SEPT	TELLER WORK/CHECK COPIES & VOUCHERS			106
144	1985	OCT	TELLER WORK/CHECK COPIES & VOUCHERS			107
145	1985	OCT	TELLER WORK/CHECK COPIES & VOUCHERS			108
146	1985	NOV	TELLER WORK/CHECK COPIES & VOUCHERS			109
147	1985	NOV	TELLER WORK/CHECK COPIES & VOUCHERS			110

BOX NUMBER	YEAR/FROM	MONTH/TO	CONTENTS	NOTES 1	NOTES 2	COUNT/FK
148	1985	DLC	TELLER WORK/CHECK COPIES & VOUCHERS		111	
149	1985	DEC	TELLER WORK/CHECK COPIES & VOUCHERS		112	
150	1986	JAN	TELLER WORK/CHECK COPIES & VOUCHERS		113	
151	1986	JAN	TELLER WORK/CHECK COPIES & VOUCHERS		114	
152	1986	FEB	TELLER WORK/CHECK COPIES & VOUCHERS		115	
153	1986	FEB	TELLER WORK/CHECK COPIES & VOUCHERS		116	
154	1986	MAR	TELLER WORK/CHECK COPIES & VOUCHERS		117	
155	1986	MAR	TELLER WORK/CHECK COPIES & VOUCHERS		118	
156	1986	APR	TELLER WORK/CHECK COPIES & VOUCHERS		119	
157	1986	APR	TELLER WORK/CHECK COPIES & VOUCHERS		120	
158	1986	MAY	TELLER WORK/CHECK COPIES & VOUCHERS		121	
159	1986	MAY	TELLER WORK/CHECK COPIES & VOUCHERS		122	
160	1986	JUNE	TELLER WORK/CHECK COPIES & VOUCHERS		123	
161	1986	JUNE	TELLER WORK/CHECK COPIES & VOUCHERS		124	
162	1986	JULY	TELLER WORK/CHECK COPIES & VOUCHERS		125	
163	1986	JULY	TELLER WORK/CHECK COPIES & VOUCHERS		126	
164	1986	AUG	TELLER WORK/VOUCHERS/CHECKS AT IRS		127	
165	1986	SEPT	TELLER WORK/VOUCHERS/CHECKS AT IRS		128	
166	1986	OCT	TELLER WORK/VOUCHERS/CHECKS AT IRS		129	
167	1986	NOV	TELLER WORK/VOUCHERS/CHECKS AT IRS		130	
168	1986	DEC	TELLER WORK/VOUCHERS/CHECKS AT IRS		131	
169	1987	JAN	TELLER WORK/CHECK COPIES & VOUCHERS		132	
170	1987	JAN	TELLER WORK/CHECK COPIES & VOUCHERS		133	
171	1987	FEB	TELLER WORK/CHECK COPIES & VOUCHERS		134	
172	1987	FEB	TELLER WORK/CHECK COPIES & VOUCHERS		135	
173	1987	MAR	TELLER WORK/CHECK COPIES & VOUCHERS		136	
174	1987	MAR	TELLER WORK/CHECK COPIES & VOUCHERS		137	
175	1987	APR	TELLER WORK/CHECK COPIES & VOUCHERS		138	
176	1987	APR	TELLER WORK/CHECK COPIES & VOUCHERS		139	
177	1987	MAY	TELLER WORK/CHECK COPIES & VOUCHERS		140	
178	1987	MAY	TELLER WORK/CHECK COPIES & VOUCHERS		141	
179	1987	JUNE	TELLER WORK/CHECK COPIES & VOUCHERS		142	
180	1987	JUNE	TELLER WORK/CHECK COPIES & VOUCHERS		143	
181	1987	JULY	TELLER WORK/CHECK COPIES & VOUCHERS		144	
182	1987	JULY	TELLER WORK/CHECK COPIES & VOUCHERS		145	
183	1987	AUG	TELLER WORK/CHECK COPIES & VOUCHERS		146	
184	1987	AUG	TELLER WORK/CHECK COPIES & VOUCHERS		147	
185	1987	SEPT	TELLER WORK/CHECK COPIES & VOUCHERS		148	
186	1987	SEPT	TELLER WORK/CHECK COPIES & VOUCHERS		149	
187	1987	OCT	TELLER WORK/CHECK COPIES & VOUCHERS		150	
188	1987	OCT	TELLER WORK/CHECK COPIES & VOUCHERS		151	
189	1987	NOV	TELLER WORK/CHECK COPIES & VOUCHERS		152	
190	1987	NOV	TELLER WORK/CHECK COPIES & VOUCHERS		153	
191	1987	DEC	TELLER WORK/CHECK COPIES & VOUCHERS		154	
192	1987	DEC	TELLER WORK/CHECK COPIES & VOUCHERS		155	
193	1988	JAN	TELLER WORK/CHECK COPIES & VOUCHERS		156	
194	1988	JAN	TELLER WORK/CHECK COPIES & VOUCHERS		157	
195	1988	FEB	TELLER WORK/CHECK COPIES & VOUCHERS		158	
196	1988	FEB	TELLER WORK/CHECK COPIES & VOUCHERS		159	
197	1988	MAR	TELLER WORK/CHECK COPIES & VOUCHERS		160	
198	1988	MAR	TELLER WORK/CHECK COPIES & VOUCHERS		161	
199	1988	APR	TELLER WORK/CHECK COPIES & VOUCHERS		162	
200	1988	APR	TELLER WORK/CHECK COPIES & VOUCHERS		163	
201	1988	MAY	TELLER WORK/CHECK COPIES & VOUCHERS		164	
202	1988	MAY	TELLER WORK/CHECK COPIES & VOUCHERS		165	

BOX NUMBER	YEAR/FROM	MONTH/TO	CONTENTS	NOTES 1	NOTES 2	COUNTER
203	1988	JUNE	TELLER WORK/CHECK COPIES & VOUCHERS		166	
204	1988	JUNE	TELLER WORK/CHECK COPIES & VOUCHERS		167	
205	1988	JULY	TELLER WORK/CHECK COPIES & VOUCHERS		168	
206	1988	JULY	TELLER WORK/CHECK COPIES & VOUCHERS		169	
207	1988	AUGUST	TELLER WORK/CHECK COPIES & VOUCHERS		170	
208	1988	AUGUST	TELLER WORK/CHECK COPIES & VOUCHERS		171	
209	1988	SEPT	TELLER WORK/CHECK COPIES & VOUCHERS		172	
210	1988	SEPT	TELLER WORK/CHECK COPIES & VOUCHERS		173	
211	1988	OCT	TELLER WORK/CHECK COPIES & VOUCHERS		174	
212	1988	OCT	TELLER WORK/CHECK COPIES & VOUCHERS		175	
213	1988	NOV	TELLER WORK/CHECK COPIES & VOUCHERS		176	
214	1988	NOV	CHECK COPIES OF CHECKS WRITTEN AFTER 11-4-88		443	
215			CANCELLED CHECKS & BANK RECONCILEMENTS		444	
300	1984-1985		PERIOD END		177	
301	1986		PERIOD END		178	
302	1987		PERIOD END 1ST AND 2ND QUARTER		179	
303	1976	1982	GENERAL LEDGER AND OFFICE ACCTS; 1317 STATEMENTS/ 1978		180	
304	1976		BOOKS		181	
305	1977		BOOKS		182	
306	1978		BOOKS		183	
307	1978		TRIAL BALANCE SHARE ACCOUNTS		184	
308	1979		TRIAL BALANCE SHARE ACCOUNTS		185	
309	1970(LATE)		CHECK REGISTERS 1977, 1978, 1979, 1980, 1981		186	
310	1969	1973	INDIVIDUAL SHARE ACCOUNT LEDGERS (1969-1973) INCL: TOM HARVEY; VIOLE		187	
311	1969	1976	GENERAL LEDGERS, SHARE ACCOUNTS, MISC		188	
312	1960		OLIVETTI PRINTOUTS		189	
313	1981		SHARE ACCOUNTS, MISC PRINTOUTS		190	
314	1983		TELLER REPORTS JAN-FEB-MAR-APR-MAY-JUNE		191	
315	1983		TELLER REPORTS JULY-AUG-SEPT		192	
316	1982		DAILY REPORTS JAN-FEB-MAR-APR-MAY-JUNE-JULY		193	
317	1982		DAILY REPORTS JULY-AUG-SEPT-OCT-NOV-DEC		194	
318	1984		TRANSACTION REGISTER JAN-FEB-MAR-APR-MAY-JUNE		196	
319	1983		TRANSACTION REGISTERS JULY-AUG-SEPT-OCT-NOV-DEC		196	
320	1984		TELLER REPORTS JULY-AUG-SEPT-OCT-NOV-DEC		197	
321	1986		TELLER REPORTS JAN-FEB-MAR-APR-MAY		198	
322	1986		TELLER REPORTS JULY-AUG-SEPT		199	
323	1986		TELLER REPORTS OCT-NOV-DEC		200	
324	1986		TELLER REPORTS JAN-FEB-MAR-APR		201	
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UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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UNITED STATES OF AMERICA,) CR 89-0-63
Plaintiff,)
vs.) MEMORANDUM AND ORDER
LAWRENCE E. KING, JR.,)
and ALICE PLOCHE KING,)
Defendants.)

Presented to me is the government's motion to take depositions (Filing 463). I shall grant the motion, but I shall impose certain conditions.

Defendants argue that the government has made an insufficient showing to justify the taking of depositions in this case and defendants also argue that they have an absolute right to be present and to cross-examine the witnesses. As to the second issue, the government speculates that defendants may not be allowed to travel to the country of Jamaica, where the depositions are proposed to be taken, and the government worries that defendants, if allowed to go, might not return.

I find that the evidentiary showing of the government is sufficient in that preservation of the proposed testimony is in the interests of justice because: (a) the proposed testimony is relevant to the instant superseding indictment, (b) all of the deponents reside within the country of Jamaica and are not amenable to service of process to require their attendance at a trial in this country, and (c) at least some of the deponents have refused

to come to this country voluntarily and others could not be located. Accordingly, pursuant to Federal Rule of Criminal Procedure 15, the government has made an appropriate showing justifying the taking of the depositions. **United States v. Terrazas-Montano**, 747 F.2d 467, 469 (8th Cir. 1984); 8 J. Moore, **Moore's Federal Practice** ¶ 15.03[2] & [3] at 15-28-15-32 (2d ed. 1990).

Defendants insist they have a right to attend the proceedings and, with their counsel, confront their accusers face to face. While there may be extraordinary cases where face-to-face confrontation is not absolutely necessary to the taking of a deposition in a foreign country, **United States v. Salim**, 855 F.2d 944 (2nd Cir. 1988), the general rule is that the defendant has a constitutional right under the Sixth Amendment, **Terrazas-Montano**, 747 F.2d at 469-70; **United States v. Benfield**, 593 F.2d 815, 818-19 (8th Cir. 1979), and a right under Federal Rule of Criminal Procedure 15, Fed. R. Crim. P. 15(b), to face-to-face confrontation. The government has made no showing that would justify any other ruling except for one which absolutely requires the attendance of the defendants, if they desire, at the depositions.

The government worries about whether or not defendants will return from Jamaica. The defendants have been released on orders setting conditions of release and I have not been notified of any breach of those orders. The government presents no evidence to support its concern that if allowed to attend the depositions

defendants might not return. As a condition of attending the depositions, I shall require that defendants execute a waiver of extradition so that should the government's concern arise, the government will not be without a remedy.

Finally, Federal Rule of Criminal Procedure 15 requires me to assess the costs of taking the depositions, including the expenses of defendants and their counsel, to the government inasmuch as the court has previously found that defendants are proceeding in forma pauperis. Fed. R. Crim. P. 15(c). The Federal Rules of Criminal Procedure also counsel me to impose such conditions as are appropriate to ensure that the taking of the depositions is conducted properly. Fed. R. Crim. P. 15(d). Therefore, I shall enter the appropriate orders.

IT IS ORDERED that:

(1) The government's motion to take depositions (Filing 463) is granted, but only as provided herein;

(2) The government may take the depositions of the individuals listed below:

The Honorable and Mrs. Leacroft Robinson
Brigadier and Mrs. Dunstan Robinson
Dr. and Mrs. Warren Robinson
Mr. and Mrs. Herbert Robinson
Attorney Maurice Robinson
Mrs. Pansy Hart
Ms. Carolyn Francis

(3) The depositions may be taken in the country of Jamaica, and the country of Jamaica is hereby respectfully requested to honor the terms and conditions of this order;

(4) The scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself, meaning, among other things, that defendants may be personally present and their counsel may be personally present and cross-examine;

(5) The depositions shall be oral depositions and shall be taken before a court reporter acceptable to counsel for all parties who has the authority to administer oaths, the deponents shall be sworn in accordance with the Federal Rules of Evidence, and if requested by defense counsel, the depositions shall be video taped in addition to the stenographic recording of the depositions;

(6) The government shall make available to defendants and their counsel for examination and use at the taking of the depositions any statements of the witnesses being deposed which are in the possession of the government and to which defendants would be entitled at the time of trial;

(7) Scheduling of the depositions shall be at a time and date mutually convenient to counsel for the government and counsel for the defendants;

(8) The travel and subsistence expenses of defendants Lawrence E. King, Jr., and Alice Ploche King, as well as the travel and subsistence expenses of their respective counsel, Mr. Achelpohl, Mrs. Abbott and Mr. Fennell, for attendance at the depositions shall be borne by the government, and if necessary the government shall advance such expenses;

(9) The cost of transcripts and tapes of the depositions (including one copy for each defendant) shall be paid by the government;

(10) Once taken, the depositions shall be sealed and not made available to the public until further order of the court;

(11) Prior to departing the United States, defendants Lawrence E. King, Jr., and Alice Ploche King shall execute and deliver to counsel for the government waivers of extradition from the country of Jamaica or any other foreign country which they might enter;

(12) Defendants Lawrence E. King, Jr., and Alice Ploche King shall travel to Jamaica and return from Jamaica with their attorneys on the same airplane and shall return to the United States as soon as reasonably possible after the conclusion of the depositions;

(13) If possible, the taking of the depositions shall occur on property owned by the United States of America in Jamaica, but in any event, at a place mutually acceptable to counsel for the government and counsel for the defendants.

Dated this 28th day of December, 1990.

BY THE COURT:



Richard G. Kopf
United States Magistrate Judge

FBI

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PRECEDENCE:

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 Priority
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CLASSIFICATION:

TOP SECRET
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 UNCLAS

Date January 3, 1991

FM FBI OMAHA (147A-571) (P)

TO DIRECTOR FBI/PRIORITY/

FBI MIAMI/ROUTINE/

BT

UNCLAS

CITE: //3600//

PASS: WHITE COLLAR CRIME SECTION, FINANCIAL CRIMES UNIT; OFFICE
OF LIAISON AFFAIRS; MIAMI, ATTENTION: b6
b7cSUBJECT: ET AL;FRANKLIN COMMUNITY FEDERAL CREDIT UNION; ET AL; BF&E; WF; MF;
FAG-HUD-IRS; OO: OMAHA.RE OMAHA TELEPHONE CALL TO LEGAT MIAMI, ON
DECEMBER 27, 1990.FOR INFORMATION OF THE BUREAU, ON NOVEMBER 4, 1988, FRANKLIN
COMMUNITY FEDERAL CREDIT UNION (FCFCU) WAS CLOSED AFTER THE
EXECUTION OF A SEARCH WARRANT BY THE FEDERAL BUREAU OF
INVESTIGATION (FBI) AND INTERNAL REVENUE SERVICE (IRS) SINCEMAM:jja
(1)
Thursday-jjaApproved: CH Print Filename: JJA001W.003Time Received: / Filter Filename: JJA001S0.003MRI/JULIAN DATE: ^ 38/004 ISBN: 002 147A-571-792FOX DATE & TIME OF ACCEPTANCE: 0025 Searched mSerialized mIndexed mFiled m

^PAGE 2 147A-571 UNCLAS

THAT DATE, RECORDS HAVE BEEN RECONSTRUCTED AND NUMEROUS WITNESSES HAVE BEEN INTERVIEWED REGARDING THE MISEXPENDITURE OF APPROXIMATELY \$42,000,000.00 BY [REDACTED], SUBJECT. b6 b7C
IN MAY, 1989, SUBJECT [REDACTED] WERE INDICTED ON 40 COUNTS OF BANK FRAUD, MAIL FRAUD, WIRE FRAUD, AND INCOME TAX INVASION. EACH HAVE BEEN INTERVIEWED BY THE FBI AND IRS.

DURING THOSE INTERVIEWS IT WAS LEARNED THAT [REDACTED]
[REDACTED] SUPPOSEDLY RECEIVED A MILLION DOLLARS FROM DISTANT RELATIVES IN JAMAICA. THOSE INDIVIDUALS HAVE BEEN IDENTIFIED AS THE [REDACTED]

[REDACTED] WERE TO HAVE RECEIVED THIS MONEY AS PART OF ANY INHERITANCE LEFT TO [REDACTED] BY HER FATHER WHO WAS A DISTANT RELATIVE OF THE [REDACTED] FAMILY. INTERVIEW OF THE ABOVE INDIVIDUALS DETERMINED NO INHERITANCE WAS EVER PAID TO THE [REDACTED] BY ANYONE IN THE [REDACTED] FAMILY. NONE WERE AWARE OF THE MONIES PURPORTED TO HAVE BEEN RECEIVED BY ONE OF THE [REDACTED] FAMILIES BY [REDACTED] ALL OF THE [REDACTED] DECLINED TO TRAVEL TO THE UNITED STATES TO TESTIFY REGARDING THIS MATTER.

AS A RESULT OF THEIR DECLINATION TO TRAVEL TO THE UNITED STATES FOR THE TRIAL, WHICH IS SCHEDULED FOR MARCH 4, 1991, AN ORDER WAS ENTERED BY UNITED STATES DISTRICT COURT MAGISTRATE JUDGE RICHARD G. KOPF ON DECEMBER 28, 1990. JUDGE KOPF ORDERED ATTORNEYS FOR THE UNITED STATES GOVERNMENT AND THE DEFENDANTS'

^PAGE 3 147A-571

UNCLAS

ATTORNEYS FOR

WITH SUBJECTS

ALONG

AND

SA [REDACTED] AND A COURT REPORTER TO TRAVEL TO JAMAICA FOR THE PURPOSES OF DEPOSING THE ABOVE REFERENCED INDIVIDUALS.

b6
b7c

DEPOSITIONS ARE TO BE TAKEN IN THE COUNTRY OF JAMAICA. ALL OF THE ABOVE-MENTIONED INDIVIDUALS HAVE AGREED THAT THEY WILL BE DEPOSED IN THE COUNTRY OF JAMAICA RATHER THAN ATTENDING THE TRIAL. ON FEBRUARY 11, 1991, THE ABOVE INDIVIDUALS WILL TRAVEL TO JAMAICA FOR THE PURPOSES OF DEPOSING THE ABOVE REFERENCED INDIVIDUALS. DEPOSITIONS WILL CONSIST OF CROSS-EXAMINATION BY SUBJECTS' ATTORNEYS AND THE VIDEO TAPING OF THE ENTIRE PROCEEDING.

SAC, OMAHA, CONCURS WITH THE TRAVEL OF SA [REDACTED]

[REDACTED] TO JAMAICA FOR THE PURPOSES OF OBTAINING DEPOSITIONS FROM THE ABOVE REFERENCED INDIVIDUALS.

IT IS REQUESTED THE BUREAU APPROVE SA [REDACTED]

[REDACTED] TRAVEL TO JAMAICA FOR THE ABOVE-MENTIONED PURPOSE.

BT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

30 NOV -6 PM 3:56

UNITED STATES OF AMERICA,

ROBERT H. EDEL
CR 89-0-666 CLERK

Plaintiff,

v.

LAWRENCE E. KING, JR.,

Defendant.

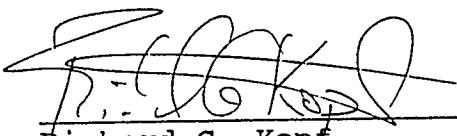
MAGISTRATE'S FINDINGS
AND RECOMMENDATIONS

Based upon the findings of fact and conclusions of law which are filed with the clerk of this court simultaneously herewith, and sealed,

IT IS RECOMMENDED to Judge Cambridge that the defendant, Lawrence E. King, Jr., be found competent to stand trial.

DATED this 6th day of November, 1990.

BY THE COURT:



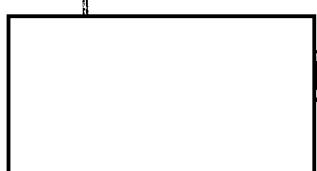
Richard G. Kopf

United States Magistrate



147A-511-793

SEARCHED	INDEXED
SERIALIZED	FILED
JAN 3 1991	





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b7C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.)
LAWRENCE E. KING, JR.,)
and ALICE PLOCHE KING,)
Defendants.)

CR 89-0-63

7 FEB 1991
DISTRICT OF NEBRASKA
By _____ Deputy _____
Norbert Ebel Clerk

MEMORANDUM AND ORDER

Presented to me is the motion of Lawrence E. King, Jr.,
(Filing 248) entitled "Second Brady Motion".¹

I have considered the submissions of the parties and the
arguments of the parties, and now rule upon the second² Brady
motion.

IT IS ORDERED that:

¹The government indicated at the hearing on this motion that it would supply all Brady material by January 3, 1991. On January 2, 1991, I was informed by counsel for the government that its copy machine had broken down and thus Brady material could not be provided until Monday, January 7, 1991. Under the circumstances, the government should be allowed to submit its Brady material by January 7, 1991.

²Categories of evidence generally considered to be Brady material are a witness' prior record, *United States v. Strifler*, 851 F.2d 1197 (9th Cir. 1988), cert. denied, 109 S.Ct. 1170 (1989); witness statements favorable to the defendant, *Jackson v. Wainwright*, 390 F.2d 288 (5th Cir. 1968); the existence of witnesses favorable to the defense, *United States v. Wilkins*, 326 F.2d 135 (2d Cir. 1964); psychiatric reports showing the defendant's legal insanity, *Ashley v. Texas*, 319 F.2d 80 (5th Cir.), cert. denied, 375 U.S. 931 (1963); specific evidence which detracts from the credibility or probative value of testimony or evidence used by the prosecution, *Thomas v. United States*, 343 F.2d 49 (9th Cir. 1965); promises of immunity to a government witness, *Giglio v. United States*, 405 U.S. 150 (1972); *United States v. Shaffer*, 789 F.2d 682 (9th Cir. 1986); and prior contrary statements of a prosecution witness, *Giles v. Maryland*, 386 U.S. 66 (1967). I do not understand the government to object to providing such material. Therefore, this order should not be construed to relieve the government of providing this information.

(1) The second **Brady** motion (Filing 248) is granted in part and denied in part as follows;

(2) With regard to paragraph 3A of defendant's motion, the government shall supply criminal records of witnesses; otherwise, paragraph 3A of the motion is denied;

(3) With regard to paragraph 3B of defendant's motion, the government shall supply any plea agreements with government witnesses; otherwise, paragraph 3B of the motion is denied;

(4) The government shall supply or otherwise identify documents, writings, reports or statements which establish the receipt, use or diversion of funds belonging to the credit union by Earl Thomas Harvey, Jr., Mary Jane Harvey, Cynthia Harvey, William Harvey, Eric Anderson or Bill Hansen; otherwise, paragraph 3C of the motion is denied;

(5) The government shall supply or otherwise identify any documents or other evidence establishing the alteration of accounts, accounting records or other bookkeeping records of the credit union by Earl Thomas Harvey, Jr., Mary Jane Harvey or Cynthia Harvey;

(6) The government shall supply or otherwise identify any evidence establishing an attempt or design on the part of any employee of the credit union or its affiliate, Consumer Services Organization, including, without limitation, Mary Jane Harvey or William Harvey, to hide the functioning of the Consumer Services Organization or the credit union from Lawrence E. King, Jr.;

(7) The government shall supply or otherwise identify any evidence establishing that records of the Consumer Services Organization or the credit union were taken from the homes of Earl Thomas Harvey, Jr., Mary Jane Harvey or William Harvey, when such removal or relocation of documents was not requested by the government;

(8) The government shall supply or otherwise identify any evidence establishing the removal or relocation of any documents, writings or other materials from the homes of Earl Thomas Harvey, Jr., Mary Jane Harvey, Cynthia Harvey or William Harvey, other than at the request of the government, which documents relate to account records or other financial records belonging to Lawrence E. King, Jr., and/or Alice Ploche King, or financial, accounting or other bookkeeping records of the Consumer Services Organization or the credit union; otherwise, paragraph 3D of the motion is denied;

(9) With regard to paragraph 3E of defendant's motion, the government shall supply all documents, records, statements of witnesses, materials or information establishing the receipt or deposit into the credit union of personal monies of Lawrence E. King, Jr., and/or Alice Ploche King, or monies from businesses in which they held an ownership interest, if such information has not previously been made available; otherwise, paragraph 3E of the motion is denied;

(10) With regard to paragraph 3F of defendant's motion, the government shall supply any agreement by and between the United

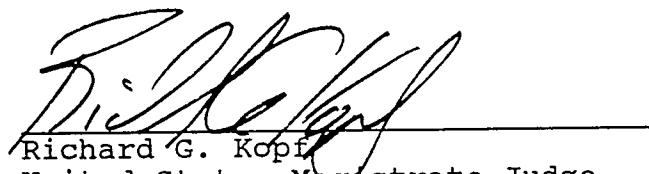
States Department of Justice, the United States Attorney's Office, the Internal Revenue Service and the National Credit Union Administration establishing or evidencing collusion on the part of said entities to violate the rights of defendant Lawrence E. King, Jr., under the Fourth Amendment respecting the search of the credit union and/or the Consumer Services Organization and any seizure related thereto; otherwise, paragraph 3F of the motion is denied;

(11) Paragraph 4 of the motion is denied;

(12) All information to be supplied by the government shall be supplied as soon as possible, but in no event later than ten (10) days after the entry of this order.

DATED this 3rd day of January, 1991.

BY THE COURT:



Richard G. Kopf
United States Magistrate Judge

90 DEC 12 AM 10:29

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RONALD M. EBEL
CLERK

UNITED STATES OF AMERICA,) CR 89-0-63

Plaintiff,)

vs.)

LAWRENCE E. KING, JR.,)
and ALICE PLOCHE KING,)

Defendants.)

MEMORANDUM AND ORDER

On its own motion, the court will set for hearing all pending motions (except the motion to suppress the search, Filing 245) and all motions which may be filed hereafter. Moreover, the court shall set a deadline for giving certain notices.

Accordingly,

IT IS ORDERED that:

(1) all pending motions (except the motion to suppress the search, Filing 245), including the following:

- (a) the motion in limine (Filing 176);
- (b) the motion to suppress statements (Filing 246);
- (c) the motion in limine (Filing 247);
- (d) the motion to produce (Filing 248);
- (e) the motion to produce attorneys' files
(Filing 331);
- (f) the motion to produce attorneys' files
(Filing 361);
- (g) the motion to change venue (Filing 387);

147A-571-796

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(h) the motion to change venue (Filing 397); and all other motions contemplated by the parties are set for hearing on December 27, 1990, commencing at the hour of 9:00 a.m., and continuing for the entire day if necessary;

(2) All motions contemplated by the parties which have not heretofore been filed shall be filed on or before December 19, 1990;

(3) All notices which may be given pursuant to Fed. R. Crim. P. 12.2(a) & (b) shall be given on or before January 16, 1991.

DATED this 12th day of December, 1990.

BY THE COURT:



Richard G. Kopf
United States Magistrate

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

90 DEC 11 AM 10: 12

UNITED STATES OF AMERICA,) CR 89-0-63-11. EBEL
Plaintiff,) CLERK
vs.)
LAWRENCE E. KING, JR.,)
and ALICE PLOCHE KING,)
Defendants.)
MEMORANDUM AND ORDER

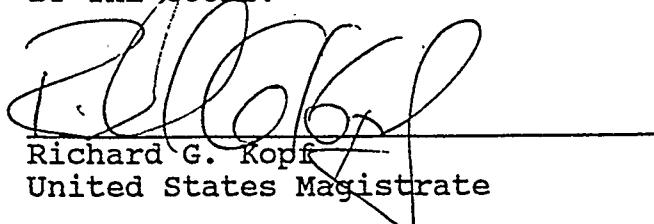
Upon being duly advised by counsel for defendant Lawrence E. King, Jr., that they require further time in order to prepare affidavits regarding the motion to suppress, and the court having a question about the government's affidavit,

IT IS ORDERED that:

- (1) Defendants shall have until December 24, 1990, to serve and file their affidavits;
- (2) The government is requested to supply the information described in paragraph 2 of its affidavit, notwithstanding the fact that the affiant believes said information has already been provided both to the court and to the defendants, and said response by affidavit shall be provided by December 24, 1990.
- (3) Responsive affidavits to the affidavits of the defendants or the affidavit of the government shall be provided January 4, 1991;

DATED this 11th day of December, 1990.

BY THE COURT:


Richard G. Kopf
United States Magistrate

- 1 -

FEDERAL BUREAU OF INVESTIGATION

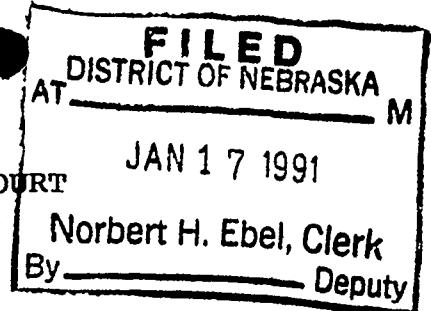
Date of transcription 1/16/91

[redacted] Corporation Division, Secretary of State, State Capitol, provided certified/exemplified copies of the Articles of Incorporation for RESTAURANT FOOD SERVICE OF OMAHA, INC., a Nebraska corporation.

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It was incorporated on December 7, 1984, and is currently in good standing.

Investigation on 1/16/91 at Lincoln, Nebraska File # OM 147A-571-797by IA [redacted] Date dictated 1/16/91



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) CR. 89-0-63
Plaintiff,) MOTION TO AUTHORIZE
vs.) PREPARATION OF TRIAL EXHIBITS
LAWRENCE E. KING, JR., and) and
ALICE PLOCHE KING,) ORDER
Defendants.)

In order to prepare for trial, it is necessary for the United States to mark exhibits and prepare an exhibit list. The documentary and physical evidence is contained in various boxes that are retained in the Federal Depository in the Zorinsky Federal Building and in various boxes that are retained in the NCUA Depository at an Omaha NCUA Reconstruction Office. Numerous boxes at both Depositories have previously been admitted in evidence during the motion stage of these proceedings and are being held by the United States and the NCUA under protective orders of the Court.

In order to mark, list, and organize the exhibits, it will be necessary to remove the original document or physical evidence from the Depository boxes, mark the particular piece of evidence with an exhibit sticker, copy the document, place a copy back in the particular Depository box, and retain the original for presentation at trial. Accordingly, the United States requests permission of the Court to accomplish the following:

1. To remove the original document or piece of physical evidence from the Depository boxes.
2. To place on the original an evidence exhibit sticker.

3. To mark the exhibit sticker with a numbering system convenient to the government.

4. To copy the original with the exhibit sticker so numbered.

5. To substitute for the original a copy of the exhibit (with numbered exhibit sticker on the copy) in the Depository boxes.

6. To prepare notebooks containing the exhibits so numbered in numerical order for distribution as follows:

- a. One copy for Defendant Lawrence E. King, Jr.
- b. One copy for Defendant Alice P. King.
- c. One copy for the trial judge.
- d. Copies for use by the prosecution.

7. To prepare an exhibit list with the exhibit number, a brief description of the exhibit and a Depository Box location by box number.

8. To retain the original exhibit in the custody of the United States until time of trial at the conclusion of which the trial judge shall determine the custody of any original exhibit admitted into evidence.

9. Upon completion of the exhibit list and exhibit copies, to make distribution as set forth in Number 6 above.

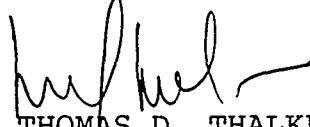
The United States further tenders to the United States Magistrate Judge any non-attorney for the United States who will be removing documents from the Depository boxes in order to accomplish the above marking procedure so that such person will be

placed under oath and be ordered to maintain the integrity of the exhibit and the Depository Box from which the exhibit was extracted.

The United States has consulted with counsel for defendant Alice Ploche King who had no objections to the proposed procedure. In a telephone conference call between the attorney for the United States, the attorneys for Lawrence E. King, Jr. and the Magistrate Judge, objections by defendant King to the proposed procedure were overruled.

UNITED STATES OF AMERICA,
Plaintiff,

RONALD D. LAHNERS
United States Attorney


By: THOMAS D. THALKEN
First Assistant U.S. Attorney

The undersigned is one of the counsel for the NCUAB and after consultation with the General Counsel for NCUAB has no objection to the procedure set forth above as to any NCUA Depository box presently under any protective order of the court.


THOMAS M. WHITE

ORDER

The above described exhibit marking procedure is approved and ordered. Non-attorney personnel for the United States who will be

engaged in the exhibit marking procedure will report to the undersigned Magistrate Judge for taking an oath and receiving the Court's orders prior to their engagement in the above described marking procedure.

BY THE COURT:

January 17th, 1991


RICHARD G. KOPF
United States Magistrate Judge

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 1/16/91

[redacted] Corporation Division, Secretary of State, State Capitol, provided certified/exemplified copies of the Articles of Incorporation for FRANKLIN USA, a Nebraska corporation.

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It was incorporated on March 31, 1986, and was suspended on January 6, 1989, for not appointing a registered agent after the resignation of the previous agent.

Investigation on 1/16/91 at Lincoln, Nebraska File # OM 147A-571-800

by *[initials]* IA
[redacted]

Date dictated 1/16/91

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 1/16/91

[redacted] Corporation Division, Secretary of State, State Capitol, provided certified/exemplified copies of the Articles of Incorporation for CONSUMER SERVICES ORGANIZATION, INC., a Nebraska corporation.

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b7c

It was incorporated on May 17, 1974, and was dissolved for non-payment of Domestic Corporation Occupation taxes on June 2, 1989.

Investigation on 1/16/91 at Lincoln, Nebraska File # OM 147A-571 - 802
by IA [redacted] Date dictated 1/16/91

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) CR 89-0-63
Plaintiff,)
vs.)
LAWRENCE E. KING, JR.,) MAGISTRATE'S
and ALICE PLOCHE KING,) FINDINGS AND
Defendants.) RECOMMENDATIONS

Presented to me is the motion to suppress statements (Filing 246) presented by defendant Lawrence E. King, Jr., (Mr. King). I shall recommend that the motion be denied.¹

I. FACTS

Mr. King, a college-educated black male of mature age, has given four statements in this case. The first statement was given on November 18, 1988, and consisted of a deposition taken by counsel for the National Credit Union Administration Board (NCUAB)

(f) Mr

¹In his motion Mr. King alleges that the statements were given to governmental authorities involuntarily, unknowingly, and unintelligently, in violation of his Fifth and Sixth Amendment rights under the United States Constitution and in violation of 18 USC § 3501. Nowhere in the motion or in any briefing paper was any issue raised about Mr. King's being mentally incompetent to give the statements at the time they were given. At the hearing, Mr. King asked me to consider the prior evidence taken on the issue of competence to stand trial. Inasmuch as Mr. King had not given the government adequate notice of his contention that the statements might be the product of mental incompetence, I declined to do so, particularly since that evidence was not related in time to the statements. However, these findings and recommendations will be without prejudice to Mr. King's specifically requesting a hearing on that issue as soon as reasonably possible after the time for giving his notice under Federal Rule of Criminal Procedure 12.2(a) & (b) has expired, which date is on or before February 1, 1991. Therefore, on or before February 1, 1991, Mr. King shall seek a hearing by written motion if he contends that the statements at issue were the product of mental incompetence. In this way the government will have notice of Mr. King's claims and an opportunity to prepare to meet those claims.

in a civil lawsuit filed against Mr. King (Government's Exhibit 1). The deposition was taken at the offices of Mr. King's retained lawyers. Present at the deposition were William E. Morrow, Jr., Samuel Clark, J. Russell Derr, and Mark Peterson, attorneys for Mr. King. The NCUAB was represented by attorney Robinson and evidently an employee of the NCUAB was also present. The deposition began at approximately 1:15 p.m., November 18, 1988, and concluded at 4:55 p.m. that date.

The second statement was given on November 23, 1988, to agents of the Internal Revenue Service (IRS) and the Federal Bureau of Investigation (FBI) (Government's Exhibit 2). The statement was taken at the offices of the IRS Criminal Investigation Division in Omaha, Nebraska. Present were William E. Morrow, Jr., attorney, Mark Peterson, attorney, Samuel Clark, attorney, Joseph Breazier, IRS agent, Dale Bahney, IRS agent, Thomas Powell, IRS agent, and Michael McCrery, FBI agent. The lawyers present during the statement were acting as counsel for Mr. King at the time. The statement began at approximately 9:00 a.m. and concluded around 4:00 p.m., with short breaks in between. At the outset of the interview, Mr. King was informed that he was the target of a grand jury investigation concerning tax fraud and possible violations of the Racketeer Influenced Corrupt Organizations Act (RICO) surrounding the claim that Mr. King had diverted funds from the Franklin Community Federal Credit Union (Franklin) (Government's Exhibit 2, at 6: 7-21). The interview concluded with the understanding that the parties might get together again to discuss additional

documents and to identify expense items (Government's Exhibit 2, at 284: 4-11).

Mr. King gave his third statement on March 31, 1989. It was a continuation of the deposition given November 18, 1988. At that time, Mr. King appeared alone and without counsel at the offices of counsel for the NCUAB. By this time, Mr. King's retained counsel had withdrawn and no longer represented him. Present at the deposition were two lawyers representing the NCUAB. The deposition commenced at approximately 9:05 a.m. and concluded around 5:00 p.m. that date (Government's Exhibit 3). Various recesses were taken (e.g., Government's Exhibit 3, at 286: 15-18). At the deposition Mr. King acknowledged that he was no longer represented by counsel, that he had been previously advised of his rights in a deposition, and that he recognized he had the right to refuse to answer any questions which might tend to incriminate him (Government's Exhibit 3, at 142: 22-25; 143: 1-14).

The fourth and final statement taken from Mr. King took place on April 25, 1989, at the IRS offices in Omaha, Nebraska (Government's Exhibit 4). Mr. King appeared alone and agents McCrery, Breazier, Bahney were present. The interview began at approximately 8:56 a.m. and concluded around 12:00 noon. During the interview Mr. King acknowledged that he was appearing voluntarily, that he gave permission to tape record the interview, that he was not under arrest, that he was free to leave at any time, and that he understood he had a right to refuse to answer any questions posed to him (Government's Exhibit 4, at 1-2). During the

interview government agents played a tape recording that Mr. King allegedly made instructing an alleged coconspirator to do certain things allegedly to cover up the alleged wrongdoing at the credit union (Government's Exhibit 4, at 109-118). The government agents endeavored to have Mr. King admit the authenticity of the tape and explain why the tape was not inculpatory (Government's Exhibit 4, at 118-131). It is obvious that the government agents were frustrated with Mr. King's explanations at times, but the agents were not abusive (Government's Exhibit 4, at 124).

Mr. King was indicted in May, 1989. The civil lawsuit commenced by the NCUAB against Mr. King is similar to the criminal indictment eventually handed up against him (Defendants' Exhibit 9). The NCUAB is an agency of the United States Government organized and existing pursuant to the Federal Credit Union Act. 12 USC § 1751, et seq. The United States of America was at all times represented in this matter by the United States Attorney for the District of Nebraska. The NCUAB was at all times represented by its house counsel and local counsel. The NCUAB was never represented by the United States Attorney for the District of Nebraska.

II. LAW

Although Mr. King makes a Sixth Amendment argument, there is no Sixth Amendment concern here since at the time the statements were given there had been no criminal proceedings initiated against Mr. King. *Kirby v. Illinois*, 406 U.S. 682, 689 (1972). Moreover, Mr. King concedes that he was never "in custody" for purposes of

Miranda v. Arizona, 384 U.S. 436 (1966). Accordingly, the remaining question is whether his statements were voluntary within the meaning of the Fifth Amendment.

Whether a statement is voluntary within the meaning of the Fifth Amendment requires an "evaluation of all of the circumstances of the interrogation." **Mincey v. Arizona**, 437 U.S. 385, 401 (1978). See 18 USC § 3501(b). The courts customarily look to the conduct of law enforcement authorities during the interrogation and the characteristics of the defendant. 2 W. Ringel, **Searches & Seizures, Arrests and Confessions**, § 25.2-25.3 (2d ed. 1990). In analyzing law enforcement conduct, the courts customarily look to: (a) actual or threatened physical brutality or deprivation; (b) extended periods of incommunicado interrogation; (c) promises or threats to obtain cooperation; (d) use of deception; (e) presentation of evidence or other factual information; (f) failure to give warning of rights; (g) whether the statements were made during a plea bargaining process; (h) whether the statements were made after prior illegal confessions. *Id.* at § 25.2(a)-(g)(2). In analyzing the characteristics of the defendant, courts customarily look to: (a) age, race, and mental capacity of the defendant; (b) physical impairment of the defendant from illness, injury, or intoxication; (c) prior experience with law enforcement, including knowledge of the defendant's rights. *Id.* at § 25.3.

In this case, there was no actual or threatened physical brutality or deprivation. In this case, most of the statements were extended in terms of their length, but the interrogations were

not incommunicado and the defendant was always free to leave. In this case, there were no promises or threats to obtain cooperation. There is no evidence of deception in this case. In this case, there was evidence presented to Mr. King, including a tape recording, among other things, wherein Mr. King allegedly made an inculpatory statement. In this case, there were no Miranda warnings given to Mr. King, but he was aware of his right to have counsel and he exercised that right on two occasions. In this case, the statements did not arise out of any plea bargaining process. In this case, the statements did not arise after prior illegal confessions had been extracted. On the state of this record, there is nothing remarkable about Mr. King's age, race, or mental capacity. There is no evidence that Mr. King was in any way physically or mentally² impaired at the time of the statements, and a reading of all transcripts, and a review of the actual tape recordings of two of the statements, indicate that Mr. King gave generally coherent, responsive answers to the questions presented to him. There is no evidence that Mr. King had any particular prior experience with law enforcement authorities, although the evidence does indicate that Mr. King appreciated his constitutional rights generally.

Mr. King's primary argument is that the FBI and IRS conspired with the NCUAB to take at least two of the statements when he did not have counsel. I find as a matter of fact that this argument is not supported by the evidence. I listened carefully to the

²This finding is made subject to footnote 1.

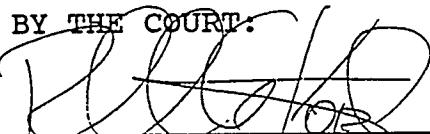
testimony of Agent Breazier, who was asked specifically by Mr. King's attorneys whether the FBI and the IRS had waited to interview Mr. King the second time until after he no longer had counsel. Agent Breazier said there was absolutely no such plan. I believe Breazier. Moreover, although it is apparent that the NCUAB and the United State of America have similar interests, there is no evidence, in this record, to support the conclusion that the NCUAB, together with the FBI and the IRS, conspired to take statements from Mr. King at a time when he was not represented. Clearly, the first two statements are voluntary for, among other reasons, Mr. King was represented by counsel during both statements. The last two statements where Mr. King was not represented by counsel do not reveal anything of substance which would indicate that the statements were not voluntary, except the fact that Mr. King was not represented by counsel. On both occasions, Mr. King was advised that he could refuse to answer any of the questions.

Applying the totality of the circumstances test, I conclude that all four statements are voluntary within the meaning of the Fifth Amendment and 18 USC § 3501.

IT IS RECOMMENDED to Judge Cambridge that the motion to suppress statements (Filing 246) be denied.

DATED this 10th day of January, 1991.

BY THE COURT:



Richard G. Kopf
United States Magistrate Judge

0003 MRI 00970

PP RUCNFB FBIOM

DE FBIMM #0011 0142027

ZNR UUUUU

P 141910Z JAN 91

FM FBI MIAMI (147A-OM-571) (NCLO) (P)

TO DIRECTOR FBI/PRIORITY/

FBI OMAHA (147A-OM-571)/PRIORITY/

BT

UNCLAS

CITE: //3460//

PASS: HQ PERSONAL ATTENTION WCC SECTION, CID, FLU, OLIA; OMAHA
PERSONAL ATTENTION

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SUBJECT: ET AL;

FRANKLIN COMMUNITY FEDERAL CREDIT UNION; ET AL; BF AND E; WF; MF;
FAG - HUD - IRS; OO: OMAHA.

CONTACT WITH

AND DETERMINED THAT ALL THREE WOULD BE WILLING TO
PROVIDE DEPOSITIONS TO A UNITED STATES ATTORNEY'S REPRESENTATIVE
AND SUBJECTS AND THEIR ATTORNEYS. ALL THREE AGAIN DENIED EVER

147A-571-805

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SERIALIZED	FILED
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PAGE TWO DE FBIMM 0011 UNCLAS

GIVING SUBJECTS MONEY. [REDACTED] EXPRESSED DISLIKE AND DISDAIN
FOR [REDACTED] A PARTNER IN A LARGE
JAMAICAN LAW FIRM. COULD NOT UNDERSTAND WHY EITHER THE SUBJECTS
OR THEIR ATTORNEYS HAD NOT CONTACTED ANY FAMILY MEMBERS TO
SUPPORT THE SUBJECTS' ALIBI.

THE INTERVIEWS CANNOT BE CONDUCTED PRIOR TO FEBRUARY 15,
1991, DUE TO TRAVEL COMMITMENTS OF [REDACTED]

EFFORTS TO CONTACT [REDACTED]
WILL CONTINUE. THE [REDACTED] ARE A CLOSE KNIT FAMILY WHO HAD
BEEN IN CONTACT WITH EACH OTHER AFTER INITIAL CONTACTS ON
JANUARY 7/8, 1991.

[REDACTED] LIVES IN THE
WASHINGTON, D.C. AREA. AN ADDRESS WILL BE OBTAINED AND PROVIDED
OMAHA.

BT

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